

Creating a new moment: The legacy of John Courtney Murray and the future of Catholicism in the public square

Author: Matthew T. Janeczko

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Creating a New Moment:
The Legacy of John Courtney Murray and the Future of Catholicism in the Public Square

**A Thesis Submitted in Partial Fulfillment
of the Requirements for the License in Sacred Theology
at the Boston College School of Theology and Ministry**

By: Matthew T. Janeczko, OFM Cap.

Co-Mentors: Mark Massa, SJ
Gregory Kalscheur, SJ

April 11, 2014

Table of Contents

Title Page	1
Table of Contents	2
Introduction	3
Chapter 1: Augustine's Theology of Participation in the Earthly City	13
Chapter 2: John Courtney Murray and the Church and State Problematic	33
Chapter 3: Catholic Voices in the Public Square	71
Conclusion: Saint Patrick's Day or the Fourth of July?	96
Works Cited	101

Introduction

Finding a “New Moment”

In the Gannon Lecture offered by Joseph Cardinal Bernardin on December 6, 1983 at Fordham University, the Cardinal provided to his audience an overview of the bishops’ then-recent pastoral letter regarding nuclear weapons, as well as some reflections as to how the development of a “consistent ethic of life” might assist in “[shaping] the American public debate” regarding a whole host of policy issues.¹ Bernardin posited that *The Challenge of Peace* served to help “shape the debate” regarding nuclear weapons; the next step, the Cardinal continued, would be to help “frame a new consensus concerning nuclear policy.”² Bernardin used the term “new moment” to describe the reality the pastoral letter had created, because it had “opened space in the public debate for a consideration of the moral factor.”³ Moving beyond the consideration of the use, creation, and maintenance of nuclear weapons, Bernardin went on to recognize that “the shaping of a consensus among Catholics on the spectrum of life issues is far from finished,” yet the “same searching intellectual exchange, the same degree of involvement of clergy, religious and laity, the same sustained attention in the Catholic press” regarding neuralgic issues of public morality were necessary to forge the aforementioned Catholic – and later, more broadly, public – consensus.⁴ Far from being simply a religious exercise wherein the Church attempted to motivate its own members to act in a certain manner, Bernardin understood “the challenge of stating our case, which is shaped in terms of our faith and our religious convictions,

¹ Joseph Bernardin, “A Consistent Ethic of Life: An American-Catholic Dialogue,” in *Selected Works of Joseph Cardinal Bernardin: Church and Society*, (Collegeville, MN: The Liturgical Press, 2001) 82.

² Ibid., 84.

³ Ibid.

⁴ Ibid., 88-9.

in nonreligious terms which others of different faith convictions might find morally persuasive.”⁵

Thus:

As we seek to shape and share the vision of a consistent ethic of life, I suggest a style governed by the following rule: We should maintain and clearly articulate our religious convictions but also maintain our civil courtesy. We should be vigorous in stating a case and attentive in hearing another’s case; we should test everyone’s logic but not question his or her motives.⁶

Bernardin’s Gannon Lecture provides the most basic theological grounding for what follows, because the Cardinal realized that for American Catholics to leave a positive mark on their nation, they would first need to understand their own teachings. Then – and only then – could Catholics offer a compelling case for one policy or another in a religiously pluralistic society. Such grounding did not merely consist of the ability to repeat dogmatic formulas, but rather required American Catholics to possess the intellectual and spiritual wherewithal to engage a complex moral and political universe in which the laws of the state and the moral teachings of the church are not actually – perhaps should not be – equivalent. For Bernardin, the Church bore an obligation both to itself and to the country to evangelize its surrounding culture. In a very plain way, the warrant for Christian interaction with the world around it – despite all its imperfections – is contained in the Christ event. The idea that the “Word became flesh” makes plain what theologians as varied as Augustine of Hippo and the Fathers of the Second Vatican Council grasped: though the world as it is known is passing away, what happens in it still matters. This thesis, therefore, argues that the wrong answers regarding the Church’s relationship with the state are as old as Donatist separatism and the Pelagian belief in the

⁵ Ibid., 89.

⁶ Ibid.

perfectibility of the earthly city. The right answers, however, are significantly more difficult to reach, precisely because of the changing nature of the world and its inherent imperfectability.

Christian – and more specifically for our purposes, Catholic – involvement in the world, remains a topic of debate because of these difficulties. Even more directly, the reality of Catholics bringing their religious beliefs to bear upon the larger American political debate remains a contentious issue. The facts, at least in one sense, speak for themselves: Catholics in the American government are here to stay. For instance, a record number of Catholics sit in the current Congress; a Catholic majority sits on the United States Supreme Court, and, as of 2011, more than two in five governors were Catholic.⁷ Indeed, as Michael McConnell mused in a 2011 lecture at Notre Dame, “to the extent the Catholicism of a candidate is even noticed, it is more likely that people wonder how these public figures can square their professed Catholicism with their evident lack of agreement with much that the Church teaches.”⁸ Aside from McConnell’s inquiries, there are also Catholics who question how much their co-religionists ought be involved in the actual creation of public policy.

Thinkers in the latter position offer a range of opinions: Michael Baxter, writing in *America Magazine*, lays the blame for the phenomenon mentioned above by McConnell at the feet of American Jesuit John Courtney Murray. Baxter concludes that the task of solving political problems in America that Murray bequeathed to later generations of Catholics backfired: “[I]n performing it, they [American Catholics] have become politically divided. [Murray] was confident that a schism over politics would never beset the Catholic community in

⁷ Michael McConnell, “Is There Still a ‘Catholic Question’ in America? Reflections on John F. Kennedy’s Speech to the Houston Ministerial Association,” *Notre Dame Law Review* 86 (2011): 1636.

⁸ *Ibid.*, 1636-37.

the United States, but it is well underway.”⁹ In other words, Murray’s mistake, at least in Baxter’s view, was his belief that the interpretation of natural law among Catholics would remain univocal. When it did not, natural law became just another tool in the arsenal of public debate, wielded as an ideological cudgel to not only impugn the positions of political opponents, but their Catholicity as well. Baxter suggests the overarching purpose of Murray’s life and work was to carve out for Catholics in America a place in politics, which he did – successfully. Yet, Baxter believes that the “Murray Project” itself was a victim of its own success, since by encouraging Catholics to engage the deepest political questions of their time, Murray also paved the way for the severe disagreements within American Catholicism that we now witness.¹⁰ Baxter’s solution to this atomization is a return to the largely “sectarian” standing of Dorothy Day and the Catholic Worker Movement. Baxter thus asks if “now Catholics are ready to absorb “[Dorothy] Day’s antistatist, personalist politics... ‘We are un-American: We are Catholics.’”¹¹ Baxter alleges that Day realized that politics required compromise and that these same compromises often required decisions inimical to Catholicism. While Baxter himself does not sketch out how such a political disengagement may take place, he certainly moves well beyond the manner in which those such as Peter Augustine Lawler interpreted Murray’s view on the Catholic relationship with the state, claiming the possibility of democracy’s compatibility with Catholicism.¹²

⁹ Michael Baxter, “Murray’s Mistake,” *America Magazine* (September 23, 2013) accessed March 6, 2014 at <http://americamagazine.org/issue/murray’s-mistake>.

¹⁰ Jesuits John O’Malley and Mark Massa have both raised the notion of unintended consequences in their studies of church history. For examples, see Mark Massa’s *Catholics in American Culture* and John O’Malley’s *What Happened at Vatican II*.

¹¹ Baxter, “Murray’s Mistake.”

¹² See Peter Augustine Lawler, “Murray’s Natural-Law Articulation of the American Proposition” in *John Courtney Murray in the American Civil Conversation*, (Grand Rapids, MI: Eerdmans, 1992). Lawler writes: “But Murray’s ‘Catholic Reflections’ are not, first of all, those

Such a perspective is not solely reserved to the sectarian, “anti-statist” Catholic. For instance, writing in *The Review of Politics*, Gary Glenn and John Stack outline a significantly different argument from Baxter, but end with a similar conclusion. These two authors ask the question, “Is American Democracy safe for Catholicism?” and conclude with a conditionally negative answer. Glenn and Stack identify a change in the language of the Supreme Court in the 1940s wherein the term “civil liberty” changed to “civil liberties.”¹³ This shift, they argue, was characterized by “intensified license to individual choices and desires as against other constitutional goods,” namely “the general advantage of the public.”¹⁴ Glenn and Stack suggest that the long-term result of this process has been to secularize the modern state insofar as it “prohibit[s] non-liberal, anti-civil libertarian, policies.”¹⁵ In other words, these two authors claim that Catholics in public office are permitted by the secular state to allow their views to shape their political positions insofar as they agree with the dominant secular policy narrative.¹⁶ They conclude:

Our thesis is not that Catholics cannot, in principle, be good democrats without becoming secularists. It is that contemporary American democracy, by constitutionally privileging secularism, offers Catholics in public life a strong inducement to abandon, relativize or remain silent about their moral beliefs when they conflict with secularism. Catholics

of a citizen. Hence he asks not ‘whether Catholicism is compatible with American democracy,’ as the American citizen would do. He asked whether ‘American democracy is compatible with Catholicism,’ as the American Catholic must do” (102).

¹³ Gary D. Glenn and John Stack, “Is American Democracy Safe for Catholicism?” *The Review of Politics* 62:1 (Winter, 2000) 10.

¹⁴ *Ibid.*, 14.

¹⁵ *Ibid.*, 19.

¹⁶ *Ibid.*

have to act like, not necessarily be, secularists. That makes it spiritually and politically unsafe, not to say impossible, for Catholics to be democrats now.¹⁷

Though a bleak conclusion, the authors' points are not without merit. Indeed, the very question of the appropriateness of Catholic politicians presenting themselves for Holy Communion (or receiving a Catholic burial) while supporting legalized abortion, or the obverse situation, in which a Catholic Democratic governor receives scorn from his party due to his opposition to legalized abortion, witnesses to the deep divides surrounding this matter.¹⁸

This thesis seeks to answer the question posed on one side by Baxter, Glenn and Stack, and modern secularism on the other: should Catholics be involved in the public square, and if so, in what manner and by what principles?¹⁹ These questions will be addressed in chapters one and two respectively. The third chapter will examine the perspectives of three American Catholic politicians in order to illuminate the manner in which Catholics actually envision their engagement in the public square. I will conclude by recalling Bernardin's two-fold task: "the shaping of a consensus in the Church must be joined to the larger task of sharing our vision with the wider society. Here two questions face us: the substance of our position and the style of our presence in the public debate."²⁰

¹⁷ Ibid., 28-29. Glenn and Stark, at least in my estimation, use the term democrat here in its most generic sense, i.e. participating in or supporting a democratically configured state.

¹⁸ See Charles Chaput, *Render Unto Caesar*, (New York: Doubleday, 2008), especially 158-233.

¹⁹ See Robert Gascoigne, *The Church and Secularity: Two Stories of Liberal Society*, (Washington, DC: Georgetown University Press, 2009), especially 57-66.

²⁰ Joseph Bernardin, "A Consistent Ethic of Life," 89.

The Manner of Proceeding

Chapter One begins with a theological overview of relevant portions of Augustine of Hippo's *De Civitate Dei* (*City of God*).²¹ My survey situates Augustine as a product of his time and shows, despite perhaps his own reservations to such a supposition, the development of his views regarding the relationship between the Christian and the state.²² I will primarily focus upon Book XIX of the *City of God*, which contains Augustine's efforts to consider the relationship between the Church and the state. Augustine's *City of God* crafts a doctrine of the heavenly and earthly cities that centers upon the imperfectability of human society, the necessity of the grace of Christ, and the overarching ambiguity contained in attempts to inculcate virtue in the earthly city, precisely because it does not know Christ.

Chapter Two focuses on the work of American Jesuit John Courtney Murray. The first section of this chapter addresses Murray's little known, yet important, analysis of *Gaudium et Spes* in *Theological Studies*. This line of enquiry will provide a description of the "question of the relation of the Church to human society and of her function in human society," and subsequently, the narrower question of "Church and state."²³ Expectations in this regard ought be modest, because again, Murray admits, "In neither case is the treatment systematic; but some important principles are stated."²⁴ Nevertheless, this is an important task because the principles

²¹ Augustine of Hippo, *City of God*, trans. Henry Bettenson, (London: Penguin Books, 2003) XI.1, 429. Hereafter cited as CD with book, chapter, and page number.

²² My analysis will draw heavily upon Robert Dordaro, *Christ and the Just Society in the Thought of Augustine* (Cambridge, Cambridge University Press, 2004). This exegesis of Augustine suggests that the bishop of Hippo's formulations in the *City of God* are largely colored by his handling of the Pelagian controversy. As such, my examination of Augustine will conclude by appropriating the synthesis of Robert Dodaro regarding the long-term theological effects of Augustine's conclusions.

²³ John Courtney Murray, "The Issue of Church and State at Vatican Council II," *Theological Studies* 27, (December 1966) 599.

²⁴ Ibid.

Murray believed *Gaudium et Spes* elucidated bear greatly on later attempts by the church and her members to engage broad issues of human society and the specific interactions between church and state.

After addressing the principles Murray gleaned from *Gaudium et Spes*, I will move to a more specific conversation regarding Murray's approach to Catholic participation in the American state. Drawing upon Murray's *We Hold These Truths*, I will examine the contents of his public philosophy. After this, I will make a further step by developing the prime analogue to be used in the Chapter Three: Murray's writing on the question of the legalization of contraception. Such a move offers a concrete instance of Murray's distinction between public and private morality, as well as his approach to the relationship between morality and legislative practice. Chapter Two will conclude with two particular appropriations of Murray's work on matters of public and private morality and the distinction between them. Mary Segers and Todd David Whitmore both undertook efforts to project how Murray may have approached legislation regarding procured abortions. Neither author questions what Murray's moral judgment on the matter would have been (gravely sinful), but they do disagree as to how Murray would have advised the Church to approach matters of legislation criminalizing, restricting, or fully legalizing the practice. In the final account, the major difference between the way Segers and Whitmore read Murray stem from their understandings of public and private morality. And, as will be seen in Chapter Three, the manner in which one conceives questions of private and public morality bears deeply upon the way that a Catholic politician conceives of the manner in which his or her faith ought to figure into political decisions.

Chapter Three builds upon the insights gleaned from Chapters One and Two in order to frame a distinct case study: the manner in which Catholic American approach the issue of

abortion and its legal status in the public square. This investigation will examine extended statements made by three prominent Catholic politicians. The first – and perhaps most famous text - is John Kennedy’s speech before the Houston Baptist Ministerial Association during his successful presidential bid in 1960. Though Kennedy does not speak about abortion, he does articulate several principles that touch upon the matters Murray considered, while also providing a vision of the Christian’s place in the world that contrasts with both Augustine and *Gaudium et Spes*. I will then examine the speeches given by Mario Cuomo and Henry Hyde at the University of Notre Dame. Both take up the issue of the role of a politician’s Catholicism, especially when approaching actions legally permitted in the United States, yet considered immoral by Catholics. These two politicians are a study in sharp contrasts: yet both can lay claim to furthering the legacy of Murray.

An Additional Few Words of Prologue

This thesis cannot hope to fully answer the question of what it means to be “Catholic in America,” nor what it means to be “American and Catholic.” In fact, it may not even be able to parse which term ought have priority in the lives of those who are called to offer public service to the state. What it does attempt to do, however, is to provide a well-reasoned theological argument for continued Catholic participation in politics, precisely because Catholics bear an obligation to the earthly city. Chapter One begins with the writings of Augustine of Hippo because he was during his lifetime, and remains, one of the most articulate theological voices attempting to make sense of one of the main paradoxes in Christian life: what are the obligations of the Christian to this world which is passing away? From Augustine, this work turns its attention to John Courtney Murray because of his efforts to show specifically how the Catholic

worldview remained compatible with the American Consensus.²⁵ In fact, Murray believed Catholics to be in a privileged position to advance this Consensus. Murray's life ended before the completion of his sixty-eighth year, and those who continue the "Murray Project" are left to speculate as to how he would have answered the moral questions of later generations. Segers and Whitmore attempt this very task on the matter of abortion and highlight both the strength and the weakness of Murray's thought: it provides a roadmap, but does not offer a method of determining if one has arrived at the desired destination. The final figures examined, in Chapter Three, are again, only a representation of the deep thinking offered by American Catholics since Murray began his handling of American Church/State issues. Nevertheless, Kennedy, Cuomo, and Hyde, do, in fact, provide the reader with an understanding of the immensity of the task undertaken, as well as the great possibilities (and pitfalls) present with any undertaking of reflections upon what it means to be both Catholic and American. The goal of this thesis is to argue that the surest way to a "new moment" is to recover Murray's ideas of a public philosophy that, while beginning in religious values, proves itself intelligible to even those who profess no creed. In the final account, then, this thesis is only another chapter in the "Murray Project," or, to be sanguine, another effort at the dialogue mentioned by Murray in the Introduction to *We Hold These Truths*, the dialogue that, he believed, would prevent civility from perishing, and with it, the American Consensus.²⁶

²⁵ John Courtney Murray, *We Hold These Truths*, (Lanham, MD: Sheed and Ward, 2005) 87-121. Hereafter cited as WHTT.

²⁶ WHTT, 31.

Chapter 1: Augustine's Theology of Participation in the Earthly City

Introduction

This chapter seeks to elucidate a theological basis for Catholic involvement in the secular state. It will attempt to answer arguments that suggest that such cooperation pollutes Catholic ideals and places Catholic individuals in situations where they are compelled to compromise core religious values in order to govern or, because of the ever-increasing divergence between Catholic morality and the laws of the state, engage in a fool's errand without any chance of success. All three of these objections, of course, do have merit. As stated above, Catholic morality is not necessarily well suited for legislation in a modern democracy because it is often pressured by claims of religious pluralism and civil liberties that do not necessarily square with Catholic moral principles. At the same time, the very nature of political compromise, human sinfulness, and structural sin provide ample evidence for the imperfectability of human society as it is currently constituted. Despite this reality, however, the need for Catholic participation in and care for the welfare of the state remains.

Augustine understood clearly what was at stake in interactions between the earthly and heavenly cities. Rowan Williams described Augustine's project as being "engaged in a *redefinition* of the public itself, designed to show that it is life outside the Christian community which fails to be truly public, authentically political."²⁷ Williams continued that, for Augustine, "the opposition is not between public and private, church and world, but between political virtue and political vice. At the end of the day, it is the secular order that will shown to be 'atomistic' in its foundations."²⁸ In Williams' mind then, as well as in my own, Augustine provides the

²⁷ Rowan Williams, "Politics and the Soul: A Reading of the *City of God*" *Milltown Studies* 19/20 (1987), 58.

²⁸ Ibid.

groundwork for imagining a society that both acknowledges that the reality of religious pluralism is a given, yet at the same time lays a theological claim that the Christian worldview and its subsequent praxis are uniquely suited for developing a more virtuous, just society. This chapter answers in the affirmative the question of whether or not Catholic theology permits its members to engage in the world, even to the point of using secular disciplines in this engagement. It also highlights the rationale for such engagement, which is rooted in the intertwined relationship between the heavenly and earthly cities. Moreover, Chapter One anticipates the work of John Courtney Murray and his attempts to craft a particular application of Catholic political philosophy for use in the American context.

My first task will be to situate Augustine's work broadly with the Christian tradition, making note of the effect that it still has upon contemporary Christian thought. Augustine's guarded acceptance of secular knowledge as a means of advancing the Christian project is a key first principle in developing my project: Augustine held in tension his belief that Christianity was the enduring means by which the earthly city and its members could increase in virtue with the reality that even the same earthly city had intellectual fruits to offer the Christian project. I will do this by examining Book XIX of what is perhaps Augustine's most well-known work: the *City of God*. Book XIX focuses its attention upon the ambiguity between the definition of virtue in the heavenly and earthly cities. In a sense, the poles of Augustine's thought shift from his earlier work *De Doctrina* to the *City of God*. In the former work, Augustine attempts to provide a justification for the use of secular learning in religious pursuits so as to improve one's understanding of sacred scripture, and by extension, Christian life. In the latter work, however, Augustine attempts to articulate the complex reality of the Christian's pilgrimage in a fallen world. Augustine continues to make the point that, though the Christian ought not be conformed

to the present world, he or she bears obligations to that same world for several reasons. There is continuity present in Augustine's thought regarding the need and helpfulness of secular learning in the religious quest; yet an older Augustine who had been deeply influenced by both his episcopal ministry as well as his bruising theological dispute with Pelagius, developed a stricter view of the need for Christian participation in the public square in the hopes that the state and its members could grow in virtue.

My treatment of Augustine will conclude with an appropriation of Robert Dodaro's reading of the Augustinian tradition, as he is able to identify that it is the confessional nature of Christianity – and its accompanying epistemological honesty – which allows Christian insights to form a more just state. Moreover, this ability to confess fault also gives the Christian the confidence to continue working for virtue despite apparent failures and setbacks. Such a reading of Augustine naturally leads to a discussion of *Gaudium et Spes*, which presents itself as a modern reading of the role of the Church (and its members) in the (post-) modern world. The connection here will become apparent since *Gaudium et Spes* presents both hope for possible progress for the earthly city, while remaining aware of the fact that final fulfillment will only take place in the heavenly city.

Augustine's Situation

Augustine's reflections in the *City of God* underlie the inherent ambiguities of Christian life: the Christian is obligated to reside in the earthly city (*civitas terrena*), yet all the while looks forward to full entrance into the Heavenly city: these uncertainties are, in the final account, mitigated through proper worship of God and charity to one's neighbor, both of which direct the

Christian to the perfection of charity in Christ.²⁹ As a consequence, the true and lasting gift of the Christian to the earthly city is not fleeting temporal peace, but rather the message of the forgiveness of sins.³⁰ Human virtue, however imperfect, possesses a value for all members of the earthly city regardless of their religion.³¹ Conversely, Augustine's political theology, if it can be called that, is fundamentally rooted in the existence of Christianity as a distinctly different option from other modes of life. Though some view Augustine as advocating a sort of authoritarian political posture (and characterize it as a bad thing, *pace* Niebuhr), others, such as Robert Dodaro) find in Augustine a valuable basis for Christian participation in the state for the benefit of all involved:

Less apparent to scholars today is a different Augustinian legacy also centered on the politics of confession, one capable of offering at least a partial antidote to the ideological pull of statehood, race, philosophy and religion, class and national security: the absolute refusal to deny one's own or one's party's role in a shared responsibility for the breakdown of the comity. In this regard, the upshot of Augustinian political thought is that it will always be exigent for individuals as well as social groups, to seek the reflection of their own images in those of their enemies, and to seek to be reconciled with those images.³²

²⁹ Robert Dodaro, *Christ and the Just Society in the Thought of Augustine*, 72. Dodaro draws out the notion of *Christus totus iustus*, commensurate with Augustine's treatment of the topic in *en. Ps. 20.2.3.5*.

³⁰ Ibid., 111. Dodaro cites *City of God* 19.27 at length to make this point.

³¹ Ibid., 113.

³² Robert Dodaro, "Augustine's Secular City," in *Augustine and His Critics: Essays in Honor of Gerald Bonner*, ed. Robert Dodaro and George Lawless (London: Taylor and Francis, 2000), e-book, 250.

Because of this, it is a mistake to engage in attempts to draw strict lines between the earthly and heavenly cities of Augustine.³³ The Christian is, by the very nature of his or her humanity, required to live and work in the earthly city, while waiting for entrance into the heavenly one. As a result, equating the visible church with Augustine's "'Heavenly City,' and non-Christians solely with his 'earthly city' is fundamentally flawed," since they do not exist as strictly separate groups.³⁴ What is more, even those people who root themselves firmly in the earthly city have something to contribute to its welfare; the Christian may possess the ability to do this to a greater extent, but he or she would be well-served many times in using secular disciplines to do so.³⁵

Similarly, the proper influence of the earthly city upon Christian life is unclear. The Christian's participation in the earthly city is not solely physical, nor is his or her commitment to the Heavenly City purely eschatological in nature: "the two cities, then, are not cities at all in the ordinary sense. They are moral categories: cosmic communities whose existence spans the whole history of the world."³⁶ Seen in this light, those who recognize "their delight is to worship God rather than to be worshipped instead of God," denote their participation in the Heavenly City.³⁷ Such worship for Augustine is primarily expressed by "the sacrifice which the Church continually celebrates in the sacrament of the altar, a sacrament well-known to the faithful where

³³ Eugene Te Selle, for instance, suggests while "Augustine detached himself from 'sacral politics,' he did not "[posit] anything as neat as a 'neutral' sphere." See Eugene Te Selle, *Living in Two Cities: Augustinian Trajectories in Political Thought*, (Scranton, PA: University of Scranton Press, 1998) 42.

³⁴ Robert Gascoigne, *The Church and Secularity: Two Stories of Liberal Society*, 20.

³⁵ Augustine, *Teaching Christianity (De Doctrina Christiana)*, trans. Edmund Hill, (Hyde Park, NY: New City Press, 2013) 1.17,27. While there is not room within this thesis to discuss the significance of *De Doctrina* within Augustine's theological development, it ought be noted this work lays the groundwork for the later theological developments in CD. From II.17.27 through II.42.63, Augustine describes the positive that secular learning may have upon those who wish to deepen their understanding and improve their ability to communicate the Christian faith.

³⁶ R.W. Dyson, *The Pilgrim City: Social and Political Ideas in the Writings of Saint Augustine of Hippo*, (Woodbridge, UK: Boydell Press, 2001), 11.

³⁷ CD XI.1, 429.

it is shown to the Church that she herself is offered in the offering which she presents to God.”³⁸ Simultaneously, Augustine recognizes that Christians bear an obligation to maintain the peace of the earthly city, despite the transient and fleeting nature of this peace.³⁹ This is a thoroughly Augustinian paradox: the relationship between participation in the worship of God in anticipation of one’s heavenly citizenship and continuing responsibility for the earthly city.

Augustine’s work does not only address the actions of individuals, but also recognizes that the state itself, while being a consequence of sin, bears a particular import for the world, since “it also has the positive task of rectifying the damage caused by sin, and it is understood as a means of discipline.”⁴⁰ When considering the state’s condition, Augustine concludes, “the better the objects of this agreement, the better the people, the worse the objects of this love, the worse the people.”⁴¹ Indeed, in a fallen world, imperfect people create imperfect institutions. The result is that in some cases, the most practical reason for a Christian to be involved in politics is because of his or her understanding for the need for forgiveness. The confession of Theodosius I thus provides for Augustine an example of humility and the desire for glory.⁴² In highlighting such an Augustinian preference, one must allow that this emperor did possess strong

³⁸ Ibid., X.8, 438.

³⁹ Ibid., XIX.17, 877; Augustine treats war broadly in such places as CD 3.10, 4.15, 19.7, and 22.6. He treats the morality of military service more specifically in 1.21 and 1.26, and Ep. 189.4. In reference to the Christian’s life in the state, see CD 5.15-17. Augustine engages the topic of Christian rules in CD 5:24-26. He uses Emperor Theodosius as a particularly appropriate example of the Christian ruler, not because of his perfect rule, but rather because of his willingness to confess wrongdoings. For an extended treatment of the topic of “confession,” see Robert Dodaro, “Augustine’s Secular City,” in *Augustine and His Critics: Essays in Honor of Gerlad Bonner*, ed. Robert Dodaro and George Lawless (London: Taylor and Francis, 2000), e-book, 231-259.

⁴⁰ Gascoigne, *The Church and Secularity*, 21.

⁴¹ CD, XIX.24, 890.

⁴² Robert Dodaro, *Christ and the Just Society*, 250.

“Catholic beliefs and virulent opposition to the enemies of the church.”⁴³ Yet at the same time, if we are to take Augustine at his word, what really impresses him about Theodosius – as he elucidates in CD.V – is the emperor’s manifestation of the reality that “while the judgments and actions of rulers will always be subject to sin, they nonetheless retain their capacity to promote the public good to the extent that they are free to renounce their own longing for glory by openly recalling in thanksgiving the gift of pardon.”⁴⁴ Such a reality stems from the fact that while the effect of peace ordered by the state may be positive, the desire of humans to dominate one another is, in and of itself, the result of “altogether intolerable pride” that is seemingly unavoidable in the human condition.⁴⁵ What really matters for Augustine then is how institutions may best serve the ultimate task of the Christian project: re-formation of the world according to Christian values rather than con-formation of these same values to the world.⁴⁶ These realities are underlined by Augustine’s discussion of the uses of secular education in understanding scripture in *De Doctrina Christiana*, as well as in his broader attempts to justify the participation of the Christian in the imperfect earthy city, instead of singularly looking to life eternal in the Heavenly City in the *City of God*.

The City of God

The reflections of Augustine regarding the participation of the Christian in the earthly city are notable, according to Montague Brown, because their meaning “is not found just in the

⁴³ Robert Dodaro, “Augustine’s Secular City,” 251.

⁴⁴ Ibid., 251.

⁴⁵ Augustine of Hippo, *Teaching Christianity (De Doctrina Christiana)*, Trans. Edmond Hill, (Hyde Park, NY: New City Press, 1996)1.23.

⁴⁶ Montague Brown, *Freedom, Philosophy, and Faith*, (Plymouth, UK: Lexington Books, 2011) 96; See also CD.IX.6.

eschaton; it exists in all the particularity of temporal communities and individuals.”⁴⁷ In *City of God*, Augustine goes to great pains to delineate the difference between the way Christians and pagans go about their business in the world. For all of the progress that the earthly city can claim, in the mind of Augustine “classical society and classical political thought provide ideals for the corporate life of humanity which they cannot provide the means to realize.”⁴⁸ In order to explain this paradox, Augustine employs allegory, writing “I classify the human race into two branches: the one consists of those who live by human standards, the other of those who live according to God’s will. I will call these two classes the two cities, speaking allegorically.”⁴⁹ What Augustine is specifically *not* doing here, however, is presenting two different worlds located on the same bit of ground: the earthly city inhabiting one sphere of reality and the City of God the other. Rather, Augustine’s allegory is better understood as recognizing that “although the cities do represent very different motivations, the two cities and two desires are, in fact, intermingled in this life.”⁵⁰ This co-existence is due to the inescapable reality that “even a member of the Heavenly city must live in the earthly city; and because all creation is in Christ, even the members of the earthly city have some inkling of the transcendent importance of God and therefore of the right value and use of things.”⁵¹

What separates the two cities is their final destiny. Augustine explains “by two cities I mean two societies of human beings, one of which is predestined to reign with God for all eternity, the other doomed to undergo eternal punishment with the devil. But this is their final

⁴⁷ Montague Brown, *Freedom, Philosophy, and Faith*, 96.

⁴⁸ Rowan Williams, “Politics and the Soul: A Reading of the City of God,” 62.

⁴⁹ CD XV.1, 594.

⁵⁰ Montague Brown, *Freedom, Philosophy, and Faith*, 204.

⁵¹ Ibid.

destiny.”⁵² Augustine intuitively grasps a temporal reality in which the secular state realizes that peace is a happy alternative to unrest and justice preferable to injustice. The best option for maintaining order in the secular state thus becomes coercion: members of the Heavenly City living within the earthly city are obligated to use these same tools precisely because “they are merely working within the inescapable constraints of fallen finitude.”⁵³

Perhaps because of the inherent difficulties of parsing the proper relationship of the Christian to the earthly city, Augustine presents “a scheme for reflecting on the nature of social virtue” that avoids “a systematic account of ‘church’ and ‘world.’”⁵⁴ Precisely because the Christian manner of being in the world is distinct, he or she also possesses a different goal for his or her life: “Very different is the reward of the saint. Here below they endure obloquy for the City of God, which is hateful to lovers of this world. That City is eternal; no one is born there, because no one dies.”⁵⁵ Nevertheless, the Christian cannot completely forget his or her duty to the earthly city. Brown suggests there are two reasons for this, the first being that “it is impossible to say to which city one belongs... freedom is real and we can freely turn to God or away from God at any one moment in time.”⁵⁶ Secondly, “as imperfect as the earthly city may be, it has a perfection of its own that, as good, will not be lost by a good God.”⁵⁷ Brown notes here Augustine’s underlying rejection of Gnosticism. Nevertheless, while “the things of the world are good ... the key ... is to use the things of this world in the right way and to live in the world virtuously.”⁵⁸ This underlines the provisional nature of the Christian pilgrimage: on the

⁵² CD XV.1, 599.

⁵³ Rowan Williams, “Politics and the Soul,” 63.

⁵⁴ Ibid., 57.

⁵⁵ CD V.16, 205.

⁵⁶ Montague Brown, *Freedom, Faith, and Philosophy*, 96.

⁵⁷ Ibid.

⁵⁸ Ibid., 97.

journey through the earthly city, the Christian finds his or her locus of action proceeding from worship that “[reforms] them in nearness of mind” to God.⁵⁹ This is the precise reason why comprehension of scripture is so important to Augustine: scripture remains one of the main conduits through the Christian may engage God in worship; moreover, scripture leads one to understand the sacrifice of the altar – the Eucharist – whereby the Christian becomes a member of the Body of Christ.⁶⁰

Regardless of one’s position in relation to authentic Christian worship, all still dwell within the domain of the earthly city. Yet the Christian also claims membership in the heavenly city that, while affecting one’s earthly life, is rooted in “future hope [rather] than in present reality.”⁶¹ It is not possible to claim residence solely in the heavenly city while still a member of the earthly city. Therefore, those who claim eschatological residence within the heavenly city remain bound by charitable obligation to the earthly one.⁶² Augustine acknowledges this paradox, yet also provides instruction by which a Christian may undertake proper action within the temporal realm. Augustine proposes that the proper posture of the Christian within the earthly city is that of living in anticipation of citizenship in the heavenly city, while also engaging in what he calls a “pilgrimage in this condition of mortality.”⁶³ At the same time, Augustine encourages Christians to contribute to the good of the earthly city in order to allow more time for believers to prepare for their future lives in the City of God. Correspondingly, right actions may encourage those living solely within the earthly city to adjust their actions

⁵⁹ CD, X.6, 380.

⁶⁰ In *City of God*, Augustine spends X.6 to explaining the relationship between the sacrifice of the Eucharist and its ability to “re-form” the Christian in response to the efforts of the broader world to “con-form” him or her. He exegetes Romans 12:1-2 in order to do this.

⁶¹ Ibid.

⁶² For instance, CD X.6, 380.

⁶³ CD XIX.17, 877.

toward the proper worship of God.⁶⁴ Worship, in this sense, is not simply liturgical, but rather the total orientation of one's life toward its proper and ultimate end: God. Consequently, the Christian's relationship to the heavenly city is both eschatological and temporal. The Heavenly City will become the Christian's permanent residence at a time still unbeknownst to him or her. Christians are, therefore, dual citizens: active participants in the earthly city, but also possessing a provisional membership in the City of God.

The final ends of people who primarily classify their citizenship as earthly or heavenly differ not always in their practical decisions, but rather in their long-term orientation toward their human destinies. The great hope of the earthly city is for "earthly peace," while the "Heavenly City" attempts to make use of temporal peace in order to facilitate its pilgrimage to immortality.⁶⁵ All are involved in the maintenance of the temporal world, but there are those – Christians, one would hope – who possess a nobler goal than peace solely within the earthly city. Thus, Christians live as if they were "in a foreign land." While peace provides for "harmony," it does not exist as a final end.⁶⁶ For non-Christians, peace within the earthly city may be a final goal; for Christians, however, it is only a means to an end. The difference here is crucial for understanding the way in which Augustine views society as a whole: "[t]he Heavenly City, in contrast, knows only one God as the object of worship ... he [God] only is to be served with that service which the Greeks call *latreia*, which is due to God alone."⁶⁷ Such a statement is reminiscent of Augustine's earlier reflections in CD.XIX.1, "There is, in fact, one city of men who choose to live by the standard of the flesh, another of those who choose to live by the standard of the spirit. The citizens of each of these desire their own kind of peace, and they

⁶⁴ XIX.19, 879

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ XIX.17, 878.

achieve their aim, that is the kind of peace in which they live.”⁶⁸ The peace of the earthly city is good insofar as it facilitates its residents’ ability to offer fitting praise to God.

R. W. Dyson highlights a helpful distinction between those who participate in the earthly city and those who consider its success as the final good. The latter, Dyson writes they are “the community, the ‘camp,’ of all those past and present in whose hearts love of self predominates over love of God.”⁶⁹ For Augustine, such an orientation is a misplacing of values, favoring human potentiality over grace. At the same time, there is a dangerous tendency to reify the Heavenly City. Dyson cautions, “The City of God is not what so many medieval political writers wanted it to be...It is the Church, but it is the Church in the broadest sense of the term.”⁷⁰ In other words, the pilgrim church on earth is not coterminous with the City of God, nor will it ever be. The previously mentioned ambiguity of participation and distinction between the cities comes into focus here: not only are members of the earthly and Heavenly cities in constant contact with one another; membership in both is provisional, insofar as the ordering of one’s life determines participation in one city or another.

Augustine continues to develop the relationship between the earthly and heavenly cities in the second half of CD X.17 by further contrasting the types of “peace” toward which each city attempts to move. He notes that these types of peace are not mutually exclusive, because “that City [the city of God] relates the earthly peace to the heavenly peace.”⁷¹ Nevertheless, Augustine points out that the “heavenly peace ... is so truly peaceful that it should be regarded as the only peace deserving the name.”⁷² For the earthly, peace is an end in and of itself.

⁶⁸ XIV.1, 547.

⁶⁹ R.W Dyson, *The Pilgrim City*, 11.

⁷⁰ Ibid.

⁷¹ CD, XIX.17, 878.

⁷² Ibid.

Meanwhile in the heavenly city, temporal peace points toward and facilitates the attainment of true peace, one that is “perfectly ordered and completely harmonious [in] fellowship in the enjoyment of God.”⁷³ Earthly peace thus prefigures the peace that can only be enjoyed through the final realization of heavenly citizenship, or, in the words of Augustine, “This peace the Heavenly City possesses in faith while on its pilgrimage ... having the attainment of that peace in view in every good action it performs in relation to God, and in relation to a neighbor, since the life of a city is inevitably a social life.”⁷⁴

In CD.XIX.18, Augustine contrasts the speculative work of the academy with that of the sure knowledge provided by the Christian faith. Augustine points out that the witness of Sacred Scripture does not provide an answer to all temporal questions. Scripture does, however, provide a witness to the “faith by which we walk on our way ... in our exile from the Lord.”⁷⁵

Augustine’s reflection upon the significance of canonical scripture, as well as its limitations, magnifies his previous contentions regarding the life of Christians within the earthly city. There are some matters in the maintenance of the city, he recognizes, that are largely the matter of politics, not the formal subject of faith. Here we find an interesting development from *De Doctrina* to the *City of God*: Augustine possesses a great optimism about the use of the pagan learning in the former work; in the latter, however, Augustine appreciates the fact that “conflict over the ultimate purpose [of each city] would be a permanent feature of society.”⁷⁶ In the *City of God*, Augustine commenced setting up the earthly and heavenly cities as inherently opposed

⁷³ Ibid.

⁷⁴ XIX.17, 879.

⁷⁵ XIX.18, 879.

⁷⁶ Robert Markus, *Christianity and the Secular*, 65

to each other, not on the grounds of superstition or diabolical menace, but rather on the reality that a totally Christian society was impossible to imagine.⁷⁷

Book X.19 continues to develop a realistic approach to Christian participation in the earthly city. Augustine recalls a familiar theme: the necessity for Christians to act charitably within the earthly city. Augustine posits that charity toward someone who is exclusively a member of the earthly city by those who dwell within both cities is not a waste of time. Indeed, Christian participation in the earthly city is proper, so long as it does not cause “detriment to his faith.”⁷⁸ Augustine also suggests that properly ordered leisure time allows one to develop a life of contemplation in which there is the “chance for the investigation and discovery of truth.”⁷⁹ Once again, Augustine does not attempt to articulate rigid delineations between residents of the earthly and heavenly, but instead points toward the proper use of one’s time in the earthly city as one focused upon “the quest for truth.”⁸⁰

Augustine highlights the paradoxical relationships the Christian will have, both with the city that is not yet present (the City of God), as well as the city in which he or she is forced to live due to corporeal existence (the earthly city) in CD XIX.20. He consequently recalls the reality of the double-tiered reality of life for a Christian: “if any one accepts the present life in such a spirit that he uses it with the end in view of that other life on which he has set his heart with all his ardour...such a man may without absurdity be called happy even now, though rather by future hope than in present reality.”⁸¹ Augustine concludes the chapter by suggesting that all human actions should be directed, ultimately, toward the good that is the worship of God. By

⁷⁷ Ibid.

⁷⁸ CD, XIX.19, 880.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ XIX.20, 881.

phrasing things in this manner, he provides an appropriate path of action for all those who wish to be citizens of the heavenly city, but remain bound within the earthly one. Augustine does not suggest ignorance of the present situation nor a flight from reality. Rather, he argues that there exist opportunities within the earthly city whereby one can gain knowledge and experience that, if used properly, may direct one towards understanding the correct and final good: God.

Robert Dodaro and Augustine's Lasting Significance

Robert Dodaro describes the work of Augustine regarding Christian participation in the state as an attempt to assist in the growth of virtue in the same state. In *Christ and the Just Society in the Thought of Augustine*, Dodaro focuses his efforts not upon the “communion of saints in the heavenly city,” but rather on “the city of God in its earthly pilgrimage.” An exhaustive analysis cannot be provided for Dodaro’s reading of Augustine, since Dodaro himself does not admit the ability to conceive of Augustine’s theology of church and state as being able to be fully systematized. He comments that “the question ‘how did Augustine conceive the just society?’ involves aspects of his thinking about Christ, human knowledge, the church, and scriptural hermeneutics, as well as political thought and ethics.”⁸² Dodaro’s key insight here, however, is one that will provide a bridge between the thought of Augustine to *Gaudium et Spes* and beyond: Augustine sees a distinct connection “between Christ’s role in mediating virtue to the soul and his role in establishing the just society.”⁸³ The corresponding supposition is articulated succinctly by Rowan Williams: “classical society and classical political thought provide ideas for the corporate life of humanity which they cannot provide the means to

⁸² Robert Dodaro, *Christ and the Just Society*, 1.

⁸³ *Ibid.*, 2.

realize.”⁸⁴ In the following treatment of Dodaro’s work, two particular themes will be developed so as to set the stage for a harmonious transition to work of John Courtney Murray. The first theme centers on the significance of Christ in Augustine’s view of the just society. The second theme is more historical in nature, flowing out of both the effects the Pelagian controversy had upon Augustine’s conception of the future of the state, as well as slow collapse of the Roman Empire.

The most basic conclusion reached through the reading of Augustine’s “theology” of church and state – or, more accurately, the believer within the state – suggests that a truly just state bases itself fully in Christ. As such, the perfect state will never exist conterminously with the earthly city. “Augustine maintains that justice cannot be known except in Christ,” and, because of this, all attempts to create a just state remain provisional and limited this side of the *parasouia*.⁸⁵ Nevertheless, Dodaro characterizes Augustine’s argument as positing that “Christ creates this just society through his mediation of divine humility to human beings through his incarnation.”⁸⁶ In other words, Augustine believed the action of the Christian in the larger world to be a fundamentally religious undertaking. While particular actions may involve engagement with secular arts or coercive measures, most fundamental to any ultimate improvement of society is its development from the virtues exemplified, and indeed personified by, Christ.

Dodaro builds upon the extended conversation of Augustine in CD.XIX regarding the relationship between the earthly and heavenly cities, by coupling it with CD.XX and noting that beyond one’s birth into original sin, human sin continues because humans “do not know how to

⁸⁴ Rowan Williams, “Politics and the Soul,” 62.

⁸⁵ Robert Dodaro, *Christ and the Just Society*, 72.

⁸⁶ Ibid.

act justly or because they fail to do so through moral weakness.”⁸⁷ Indeed, individual virtue is the building block of civic improvement. Dodaro thus rightly supposes that “for Augustine, discourse about justice cannot sustain a just society unless the statesman who offers it is also capable of purifying his listeners’ souls.”⁸⁸ This line of reasoning corresponds to Augustine’s basic Christological supposition: “Christ is the only completely just man ever to have lived. Moreover, he alone justifies other human beings by purifying and healing the soul of ignorance and weakness.”⁸⁹ Augustine, it seems, is up to two things here. He claims Christ as the center of any structure of virtue and thus suggests the necessity of Christ’s example. He also emphasizes the over-arching necessity of the grace of Christ insofar as it mitigates against a works-based conception of human achievement. The argument acknowledges that human works are necessary in the secular world; yet they only are good in terms of their imitation of Christ, and only possible because of Christ’s gracious example.

The *City of God*’s formulation within the Pelagian controversy further complicates matters because, “Augustine and Pelagius disagree over the precise role of Christ in exemplifying perfect justice and in enabling Christians to follow his example.”⁹⁰ He continues by explaining that Pelagius “disagrees with Augustine over the specific ways grace aids the soul in knowing and willing the moral good.”⁹¹ Pelagius is ready and willing to elucidate other examples of virtue commensurate with that of Christ; for Augustine, however, this is unthinkable, regardless of the admitted sanctity of Pelagius’ examples.⁹² The “takeaway” message from the Pelagian (counter)influence on the *City of God* is that Augustine emphasizes

⁸⁷ Ibid., 78.

⁸⁸ Ibid., 75.

⁸⁹ Ibid., 73.

⁹⁰ Ibid., 79.

⁹¹ Ibid.

⁹² Ibid., 80.

“the disproportionate character of the relationship between Christ’s example and that of other just human beings.”⁹³ Correspondingly, the theological disagreement regarding the person of Christ between Augustine and Pelagius is magnified vis-à-vis one’s reasonable hopes for the secular state. And so, Augustine’s “analysis in Books 2-19 of the effects of moral ignorance and weakness on the practice of justice, and of the contrary effects of Christ’s redemptive activity for the promotion of justice, is shaped by the Pelagian controversy.”⁹⁴ Such confidence in the efficacy of Christ’s sacrifice and ability to mediate grace therefore colors Augustine’s confidence in human endeavors. This emphasis on Christ places the true locus of hope for societal improvement upon believers; this is not to say, of course, that non-believers cannot achieve certain virtues. CD XIX makes this clear. What it also means, however, is that in the mind of Augustine, any overarching structural changes toward virtue will most likely originate in a Christian worldview, and any hope of maintaining gains in the face of sin will certainly reside in Christian praxis.

This brief explication of certain elements of Augustine’s *City of God*, sets the broader stage for what follows. Augustine knew that for the majority of Christians, flight from the material world was not only impossible, but inadvisable. Early in his career, Augustine suggested that secular methods of learning could help the Christian progress in virtue because it opened for him or her additional avenues into understanding scripture. In later years, Augustine built upon this insight, and suggests that life in the earthly city necessarily compelled the Christian to interact in this same city: merely waiting for salvation did not constitute virtuous behavior. What is more, Augustine believed that Christian participation in the earthly city could, in fact, increase the virtue of the city, and lead others to greater virtue themselves. Yet this

⁹³ Ibid.

⁹⁴ Ibid.

development in his worldview was only possible because of his earlier recognition of the usefulness of pagan learning and intellectual resources. Its usefulness for my project should now become clearer: Christian engagement with the state ought not be viewed imperialistically, as if Christianity bears all the answers for the ailments of the world. At the same time, however, Christianity *is* an integral component of any improvement in virtue and justice for which the state may hope. Augustine may not provide specific answers for what is to be done to increase virtue in the public square in the current time and place, but a careful reading of his theological outline for the interaction of church and state, while also adducing the understanding that such participation will necessarily lead to political compromise. With this in mind, we now turn to the work of John Courtney Murray: Murray, though not often quoting Augustine, builds upon many of Augustine's themes. What is more, Murray attempts to answer the broader Augustinian question in the specific terms of the United States: what ought the Catholic do (and not do) and support (and not support) when faced with a pluralistic earthly city?

As I turn to Murray's work, it will be important to keep in mind that Augustine himself saw the opportunity for the creation of a purely Heavenly City as an eschatological eventuality; in the meantime, however, the Christian bore an obligation to work towards moving the locus of the earthly city toward its heavenly destiny. Indeed the Christian must contend with "the rise, the development and the destined ends of the two cities, the earthly and the heavenly, the cities which we find, as I have said, interwoven, as it were, in this present transitory world, and mingled with one another."⁹⁵ John Courtney Murray engaged these questions: his work spanned over parts of three decades and an ecumenical council. The discussion now turns toward Murray in an attempt to discover his approach to the "interwoven" nature of the heavenly and earthly

⁹⁵ CD, XI.2, 430.

cities so as to point the way to the conclusion of this work: a better understanding of how Catholics have gone about articulating their beliefs in this complex reality.

Chapter 2: John Courtney Murray and the Church and State Problematic

Introduction

Chapter Two seeks to accomplish two major tasks. The first of these is to explore the church and society problematic as articulated by John Courtney Murray. This will be achieved by examining a representative example of Murray's pre-conciliar writings regarding church and state issues and his treatment of *Gaudium et Spes*. Next, I will examine Murray's application of these principles to the issue of contraception. Murray's writings on this topic included essays within *We Hold These Truths* and his undated memo to Cardinal Richard Cushing of Boston. The latter source provides for us a direct application of his principles to a real-world case. The second task of this chapter is to formulate a case study of sorts, using Murray's general principles as well as his writing on contraception to consider how Murray *may* have responded to the question of the legalization of procured abortion. The works of Mary Segers and Todd David Whitmore will frame this part of the project.

This chapter builds on the first by providing evidence of both development and continuity within the Augustinian perspective, and by also answering in a specifically American context the scope and ability of Christianity's influence upon the secular state. If Chapter One provided an Augustinian entrance point to the church/state problematic, then Chapter Two will take the reader through some important moments of evolution in Church teaching regarding the relationship of church and state. Chapter Three will continue this line of argument, but make specific efforts to blend the approaches of the first two chapters by examining the comments of John Kennedy, Mario Cuomo, and Henry Hyde regarding the church/state problematic generally, and the topic of abortion legislation more specifically. Kennedy's comments do not particularly apply to abortion, yet they are central to our discussion. Cuomo and Hyde comment about the

role of the Catholic vis-à-vis abortion in the secular state: all three of these thinkers will be examined in light of Murray's previously explained principles.

Pre-Conciliar Perspective

The views of John Courtney Murray regarding matters of church and state in the pre-conciliar period are well analyzed and categorized. Murray's theological reflections appeared well before their time, catching the attention of such noted American conservatives as Francis Connell in *The Ecclesiastical Review* and W. Butterfield in *The Clergy Review*.⁹⁶ Their concerns subsequently made it to the desk of the Cardinal Secretary of the Holy Office, Alfredo Ottaviani.⁹⁷ Murray's writings never led him to be officially censured by the Vatican, yet his Jesuit superiors did instruct him to cease writing on matters of church and state. Though Murray would be vindicated in part by his appointment as a *peritus* for Cardinal Spellman of New York during the Second Vatican Council, at the time of his silencing Murray thought the cause lost, even clearing his shelves at Woodstock of those works concerning this topic and returning them to the library.⁹⁸

For the purposes of this thesis, I will examine a representative work of the pre-conciliar Murray, the last in a series of articles published in *Theological Studies* in the early 1950s regarding matters of church and state. Reprinted in the anthology *Religious Liberty*, Murray titled his 1955 article on the subject "Leo XIII and Pius XII: Government and the Order of Religion." Here Murray "attempted to separate Leo XIII's reclaimed focus on social dualism

⁹⁶ Donald Pelotte, *John Courtney Murray: Theologian in Conflict*, (New York, NY: Paulist Press, 1976) 15.

⁹⁷ *Ibid.*, 46ff.

⁹⁸ *Ibid.*, 52-3; 81

from his endorsement of establishment and intolerance.”⁹⁹ The article is notable for both its complexity and its breadth. Therefore, I shall only highlight a few portions of the article that are necessary to understand later developments in Murray’s thought.

Murray seeks to trace Leo’s arguments to their logical conclusions, noting that true religion (and thus proper formation of conscience) actually provide constructive assistance to the larger society. What is more, Murray reads Leo’s encyclical *Rerum Novarum* as suggesting that the role of the government is not to create a just society, but rather to order it. Through the entirety of the following analysis, it will be helpful to keep in mind what I consider to be a key hermeneutical question asked by Murray of Leo, and, one which should also be asked of the rest of the views presented herein: “Is this legal institution [that is supported or proposed] necessary or useful for the common good of the church and the state within a particular society, and also of the universal church and international community?”¹⁰⁰

One of the areas addressed by Murray is the situation of the Christian in the world, since a person who professes a religious creed still remains a citizen of the state. Murray addresses here what ought be by now a familiar paradox, proposed by Augustine in the *City of God*. Initially, Murray outlines Leo’s efforts to maintain the “‘principle of principles’, that is, the freedom of the Church.”¹⁰¹ This freedom exists in the spiritual realm, allowing the Church to handle its spiritual affairs as it sees fit. Such freedom also recognizes that the Church “importantly includes a civil freedom, an empowerment in the face of civil society.”¹⁰² Leo

⁹⁹ Leon Hooper, “Introduction” to “Leo XIII and Pius XII: Government and the Order of Religion,” in John Courtney Murray, *Religious Liberty*, ed. Leon Hooper, (Louisville, KY: Westminster/John Knox Press, 1993) 49.

¹⁰⁰ John Courtney Murray, “Leo XIII and Pius XII: Government and the Order of Religion” in *Religious Liberty*, (Louisville, KY: Westminster/John Knox Press, 1993) 116.

¹⁰¹ *Ibid.*, 70.

¹⁰² *Ibid.*

himself recognized the dual trajectory of human existence, but claimed that the human subject ought to be “undivided in the inner unity and integrity of his conscience by any conflict between the two authorities, ecclesiastical and civil, to which he owes obedience.”¹⁰³ Such a relationship plays itself out specifically in reference to the “goodness of laws,” which is determined, Murray reasons, by the answer to the question: “is this law necessary or useful for the common good in the given circumstances?”¹⁰⁴ Murray qualifies the question further: “the morality of a law is not an immediate guarantee of its necessity or utility. Still less is the badness of one law an immediate proof of the goodness of its contrary.”¹⁰⁵ Murray thus engages both the question of the Christian’s loyalty to the laws of the state and the possible ability of these laws to promote the common good. He cites Leo XIII’s dashed hopes that “ideally speaking, the fortunes of religion should never become so entangled with the politics of government; but such entanglements are inevitable when politics becomes the field of ideological battles.”¹⁰⁶ Yet, with Leo, Murray suggests that “true religion, so runs the further argument, is a thing of the highest advantage to society; therefore the care of it counts among the purposes of government.”¹⁰⁷ Simultaneously, Murray, hearkening to *Rerum Novarum*, posits that the most basic role of government is “to create the conditions of order under which original vitalities and forces, present in society, may have full scope to create the values by which society lives.”¹⁰⁸ Murray concludes:

But the value of order resides primarily in the fact that it furnishes *opportunitates*,
facilitates (the Leonine words, cited above) for the exercises of the freedoms which are

¹⁰³ Ibid.

¹⁰⁴ Ibid., 73.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., 75.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid., 78.

the rightful prerogative of other social magnitudes and forces. These freedoms, rightly ordered, are the true creative sources of all manner of social values.¹⁰⁹

By citing Leo, Murray underlines the paradoxical relationship in the life of a Christian between the values of the Church and his or her duty to the state. The Church, for its part, has twin obligations: teaching its own members, as well as attempting to provide moral guidance for the state. The state is required to attempt to create an environment whereby its citizens are most able to flourish. This triangular relationship is further complicated when the state does not desire to follow the moral leadership of the Church, and the Church remains unable to compel its moral view to be legislated by the state. This conflict would continue to be the subject of Murray's thought throughout his career. And, if the topics covered in the following pages are any indication, it is a problem still very much seeking a satisfactory solution.

Another helpful achievement of Murray is his delineation of three principles of tolerance in Leo XIII's reflections. The significance of this achievement by the Pope may not at first seem obvious. However, for Murray, who at the time was attempting to find "growing ends" in the traditional understanding of the Church/state relationship, the Pontiff's conclusions proved vital. Murray distilled from Leo's two encyclicals, *Libertas* and *Immortale Dei*, three pertinent principles regarding toleration. Murray first notes that Leo recognizes that "error and evil, religious division and moral discord, are permanent aspects of our sinful condition."¹¹⁰ In other words, Leo believed that God allowed a less-than-perfect world to continue to exist, even if the reasons remained unknown. This first conclusion, therefore, is grounded in an Augustinian

¹⁰⁹ Ibid. *Opportunitates* and *facilitates* have the sense of denoting the right or appropriate time. In this particular passage, they describe a society which, properly ordered, provides opportunity for virtuous living.

¹¹⁰ Ibid., 90.

reality that is subsequently explained through a neo-Thomist heuristic.¹¹¹ Leo continues with this Thomist line of reason by recognizing that tolerance itself is not a vice. Rather, “it is an imitation of God; it is an act of virtue – the virtue that distinguishes the jurist and the statesman, political prudence.”¹¹² This Augustinian/Thomistic synthesis gains further clarity here: situated in an imperfect world, the responses of those tasked with judging humans against the standards of the moral law differ from those tasked with creating civil laws in an effort to summon out more virtuous behavior from the people. Moral and legal toleration are different because their ends are, in and of themselves, different, though not necessarily opposed. The third principle Murray underlines is best quoted in full, because it is Murray’s incisive best: “he [Leo] asserts that principle that at once makes necessary the virtue of tolerance and also sets the limiting norm for its exercise, namely, the exigencies of ‘the common good,’ the public welfare in given circumstances.”¹¹³ Once again, Murray highlights the inherent difficulty of Leo XII’s age:

What is more important, he [Leo] makes his whole doctrine hinge on his cardinal principle – the distinction between Church and state, between the order of ethics and theology and the order of law and politics, between the dogmatic judgment of the Church and the legal decisions of government.¹¹⁴

In a certain sense, Murray recognized in Leo the historically-conditioned problematic first presented by Augustine: how must the Christian act in the secular state? What is more, just as Augustine had moved from the optimism and careful engagement with pagan culture in *De Doctrina* to a more complicated and ambiguous position in the *City of God*, so too does Murray see Leo as moving in a direction wherein he does not force “upon organized society and its

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

government the same single norm of judgment and action by which the Church must abide.”¹¹⁵

In an effort to better understand how the Church ought interact with a world that did not recognize the priority of religious authority in determining the how the political sphere should be ordered, Murray saw Leo as taking a decisive step toward constructing a doctrinal configuration in which the Church could present plausible, if imperfect, solutions to real-world problems.

Murray provides context to such a realization by speaking directly to the reality that one type of government is not necessarily better than other. Murray, for instance, muses that the current constitutional government in Spain is not superior to American constitutionalism solely because the former had entered into agreements with the Holy See.¹¹⁶ In this sense, Murray, therefore, avoids committing to what he calls a “unitary doctrine.”¹¹⁷ He reasons: “But what matters is the identity of the norms of judgment. The point is that the American and the Spaniard would both be arguing from a unitary premise, complex in its content, which would be mutually shared as the doctrine of the universal Church.”¹¹⁸

One can see here the basis upon which Murray will base his later theological reflections upon the Church’s presence in a pluralistic state. If Murray’s reading of Leo is correct and “good law – necessary and useful for the public advantage” is the primary task of the state, then the locus of Catholic participation in the state may originate in religious faith, but may not remain or even culminate there.¹¹⁹ Rather, those Catholics who participate in the secular state must possess the ability to translate Catholic principles in a manner that is both faithful to those principles, while also remaining intelligible to the state they wish to serve. In the final analysis, Murray

¹¹⁵ Ibid., 91.

¹¹⁶ Ibid., 113

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

presents a question that requires answering: “Is this legal institution necessary or useful for the common good – both of Church and state within a particular society, and also of the universal Church and the international community?”¹²⁰ The manner in which Murray concludes also provides an appropriate segue into his work regarding *Gaudium et Spes*, because it presents the premise with which both he, as well as the Council, grappled so mightily: “If therefore the full Catholic doctrine on establishment and intolerance were consolidated in this form, the constitution of a unitary Catholic position, permitting a variety of applications, would be complete.”¹²¹ This search for a “unitary” position that may also admit applications of various sorts based upon time and circumstance is further developed in *Gaudium et Spes*, and so, it is to John Courtney Murray’s analysis of this document to which we now turn.

John Courtney Murray and *Gaudium et Spes*: An Initial Assessment

The next step in our discussion involves an analysis of the Second Vatican Council’s final document, *The Pastoral Constitution on the Church in the Modern World, Gaudium et Spes*.¹²² While what can reasonably be classified as a positive outlook on human progress is present throughout the document, its length and scope does indeed serve notice that the Council Fathers believed there still existed much progress to be made. My attempts to investigate the points of continuity between Augustine and *GS* will be coupled with the explanations provided by a largely forgotten (though incisive) article published by John Courtney Murray in *Theological Studies*. “Church and State at Vatican II” took up what Murray believed to be the

¹²⁰ Ibid., 116.

¹²¹ Ibid., 117.

¹²² When Murray quotes *GS* within one of his articles, I will use his translation. However, when I quote *GS*, I will use the translation provided by Austin Flannery’s “New Revised Edition” of the Documents of Vatican II. Hereafter, I will refer to *Gaudium et Spes* as *GS*.

accomplishments of the *Declaration on Religious Freedom*, and placed them in the further context of *GS*.¹²³ Both of these documents, Murray explained, were grounded in their attempts to “develop the doctrine of recent popes on the inviolable rights of the human person and on the constitutional order of society.”¹²⁴ The truly important advance, however, was not a matter of dogmatic theology centered purely upon the internal life of the Church proper, but rather moved toward “certain significant contributions towards a development of doctrine in regard to the Church-state issue.”¹²⁵ For Murray, “the Constitution on the Church in the World Today confirmed, and in certain respects, advanced, this development.”¹²⁶

Murray continued his pursuit of the task undertaken in “Government and the Order of Religion” in his writing on *GS*. In this article, he suggested that the fundamental goal of Leo XIII “was the establishment of a Christian order in the whole of society. The orderly relationship between the two powers was simply a subordinate aspect of this larger goal.”¹²⁷ Indeed, “The issue of the diarchy as such had begun to lose its ancient primacy.”¹²⁸ Diarchy, as understood by Murray, referred broadly to his understanding of the twin powers of the church and state configured in way so as to engage in mutual “co-operation toward the integral good of the ‘same one man, both Christian and citizen’ whom they both encounter ... in the concrete life of society.”¹²⁹ Murray believed that Leo XIII found himself less concerned with the theological relationship between church and state than with the actual improvement of society. What is more, Murray, in examining chapters three and four of *GS*, noted a “basically Leonine

¹²³ Subsequent references to *Declaration on Religious Freedom* cited as *DH*.

¹²⁴ John Courtney Murray, “The Issue of Church and State at Vatican II,” 581, quoting *DH* §1.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*, 582

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

inspiration,” but also “the development of doctrine beyond its Leonine stage.”¹³⁰ He concluded, “The source of the development lies in a broadening of the perspectives in which the question is viewed.”¹³¹ While further explanation of the influence of Leo and the Council’s response is not necessary, it suffices to note along with Murray two important interpretive factors for *GS*. While Leo XIII’s view of the world largely referred to Europe, the Council Fathers at Vatican II took a more expansive view than their predecessors. When the Council wrote about human society, it meant the entire world. Equally as important for understanding the advances of *GS* is the reality that Leo possessed a “religio-civilizational outlook [that] was related to his historical outlook, which was simple and narrow.”¹³² Murray explains:

The medieval era was the golden age of Christian unity, of harmony between the two powers, and of the obedience of princes and peoples to the authority of the Church. Then came the Reformation, which was a revolt against the authority of the Church, the rupture of Christian unity, and the origin of a profound civilizational change.¹³³

Though Leo could look back on these days with forlorn yearning, Vatican II “relinquished this [the era of Christian unity] and adopted a prospective view [of history].”¹³⁴ Simply put, while Leo XIII adopted a theological attitude of recovery, Vatican II, Murray reasoned, sought a future world that was possibly better than past eras.

Before a deeper engagement of *GS*, it may be helpful to summarize what Murray believed Vatican II had accomplished. Largely commensurate with previous explanations Murray undertook in describing the shift from a classical worldview to historical consciousness,

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid., 583

¹³³ Ibid.

¹³⁴ Ibid.

Murray named two particular overarching theological achievements.¹³⁵ “The first,” he wrote, was “a rising consciousness of the dignity of the human person,” while the second centered upon “a mounting movement toward the unity of the human family.”¹³⁶ The effect of all this was “an increasing realization, in all manner of institutional forms, both of human dignity and of human unity.”¹³⁷ In this way, Vatican II generally, and documents such as *DH* and *GS* specifically, realized that “the future of civilization on this earth depends, not solely on the Church, but on the widest possible co-operative effort.”¹³⁸ Indeed, if Leo XIII took the first steps back from a rigid Church-state diarchy, then the Council took the next logical steps by “[insisting] that the inherent sense of the Gospel summons the Church to the task of lifting man [sic] to his true dignity and of knitting the bonds of human community.”¹³⁹ Just as Augustine had believed that Christianity had particular contributions to make to secular society, so too did *GS*. Indeed, *GS* seems willing both to employ the relationship between the Christian and secular education as does *De Doctrina*, while at the same time endorsing the necessity of the Christian in the state if, in fact, a more effective virtue is to be present.

Murray recognized, at least as early as the publication of John XXIII’s encyclical *Pacem in Terris*, that there existed a need to recognize a difference between the society and the state.¹⁴⁰ For Murray, John XXIII offered “a development of the tradition” by “[accepting] the distinction

¹³⁵ Ibid., 584. For further speculation regarding the connection between Murray’s theological approach and its reliance upon the work of Bernard Lonergan, see Thomas Hughston, “Murray and the People: A Beginning,” in *John Courtney Murray and the Growth of Tradition*, ed. Leon Hooper and Todd David Whitmore, (Kansas City, MO: Sheed and Ward, 1996) 86-7.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid., 585.

¹⁴⁰ John Courtney Murray, “Things Old and New in ‘Pacem in Terris,’” *America*, April 27, 1963, accessed on March 6, 2014 at <http://americamagazine.org/issue/things-old-and-new-pacem-terris>.

that seems to be missing from Leo XIII, namely, the distinction between society and the state.”¹⁴¹

The consequences of this, Murray continued, was that the freedom offered by society and the state itself could differ: the state, rooted in “the ancient principle of constitutionalism” ought have the power of its government bound by the same constitution.¹⁴² The role of the state is thus to “guarantee the juridical order, that is to say, the whole order of human rights and duties whose roots are in the human person as situated in the contemporary world.”¹⁴³ Murray appears to leave the consequences of this development for society itself largely unexplained. The very conclusion of his comments regarding *Pacem in Terris*, however, provide an important clue: “Man, therefore, manifests himself as the image of God chiefly by his intelligent, confident efforts to master the course of historical events and direct it toward the common good of the peoples of the earth.”¹⁴⁴ In Murray’s mind, the theological distinction between the state and society is, in a way, an example of the jurisprudential principle: the most freedom possible, with the least amount of restriction. Such a demarcation, then, allows the state to offer its citizens the freedom needed to mine the full potential of the earthly city, while still reserving its right to act in such a way as to restrict the freedom of individuals in order to protect the common good. Of course, two larger questions remained unanswered by Murray: at what point is the state obligated to enact such restrictions and how ought one define the common good?

“Church and State at Vatican II”: A New View of the Ancient Problematic

In reviewing *Gaudium et Spes*, Murray suggested that the “Church-and-society-problematic” contained two major concerns. *GS* attempted to “reaffirm the Leonine distinction

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

between the two societies,” as well as “reaffirm the transcendence of the Church to the temporal order.”¹⁴⁵ Murray roots such claims in Chapter Four of the document, wherein the role of the church in the modern world is addressed. Paragraph 40 echoes this theme, as it suggests that the Church possesses “a saving and eschatological purpose which can be fully attained only in the next life.”¹⁴⁶ It continues, “But it is now present here on earth and is composed of men [sic]; they the members of the earthly city, are called to form the family of the children of God even in this present history of mankind and to increase it continually until the Lord comes.”¹⁴⁷ However, *GS* does not place the responsibility for the advancement of humanity solely upon the shoulders of Catholics, since it is also noted that the Church embarks on the “same journey as all mankind and shares the same earthly lot in the world.”¹⁴⁸ And: “The Church, then, believes it can contribute much to humanizing the family of man and its history through each of its members and its community as a whole.”¹⁴⁹ *GS* goes on to note that not only may other Christian denominations act as a leaven for the world, but also that “there is a considerable and varied help that it can receive from the world in preparing the group for the Gospel, both from individuals and from society as a whole, by their talents and activity.”¹⁵⁰ Here is a point of contact, in fact, between the previously considered works of Augustine and the Council. Not only is there raised the prospect of secular arts assisting in the work of the Gospel but also the contributions that members of the earthly city may make toward the common good is not dismissed.

¹⁴⁵ John Courtney Murray, “Church and State at Vatican II,” 599.

¹⁴⁶ *Gaudium et Spes* (Pastoral Constitution on the Church in the Modern World), in *Vatican Council II: The Conciliar and Post Conciliar Documents*, Vol. 1, New Revised Edition, *Vatican II*, December 7, 1965, Trans. Austin Flannery, (Northport, NY: Costello Publishing Company, 2004) 939, § 40. Hereafter, cited by paragraph number only.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

GS next turns, in paragraph forty-one, to the contributions that the Church may make to individuals. The Church serves a two-fold function: prophetic witness and conduit to Christ. At the same time, *GS* recognizes the advances made by society as a whole in advancing the rights of humanity. Thus, the Church “acknowledges and holds in high esteem the dynamic approach of today which is fostering these rights all over the world.”¹⁵¹ Simultaneously, “There is a temptation to feel that our personal rights are fully maintained only when we are exempt from every restriction of divine law.”¹⁵² Once again, the Council attempts to chart a middle path, both recognizing the important (one could say necessary) role that it has to play in an individual’s life, while also allowing that its involvement is not compulsory. Quite to the contrary: Divine Law permits one the freedom to achieve higher virtue; it does not suggest coercive law that demands a certain (possibly virtuous) behavior through threat of punishment.

Murray himself picks up the Council’s work in paragraph forty-two: *GS* here addresses what the Church provides for the wider society. The document initially sets a distinct theological goal for the Church: “Christ did not bequeath to the Church a mission in the political, economic, or social order: the purpose he assigned was a religious one.”¹⁵³ Consequently, the Church is “not committed to any one culture or to any political, economic or social system.”¹⁵⁴ This means, of course, that *GS* claims for the Church a role in any type of society or situation. Murray detects here an advance on Leo’s previously stated lack of preference for a particular political system. Leo “[endeavored] to disentangle the Church from the institution of monarchy, without at the same time committing the Church to democratic institutions;” the Council itself implies a preference toward a political state that possesses “a consciousness of the dignity of the

¹⁵¹ Ibid., § 41.

¹⁵² Ibid.

¹⁵³ Ibid., § 42.

¹⁵⁴ Ibid.

person and a recognition of human rights.”¹⁵⁵ Murray recognizes that these sections of *GS* avoid a dangerous tendency to equate the transcendence of the world with isolation from it. Instead, Murray here again recognized an inherently Augustinian idea, picked up by Leo and finally codified within *GS*. Murray quotes a passage from Leo’s *Immortale Dei* in order to illustrate the identity the ambiguity that *GS* respects:

That immortal work of a merciful God, which is the Church, does indeed, per se and of its very nature, look to the salvation of souls and to their achievement of happiness in heaven. Nevertheless, in the world of mortal man it is the source of so many and such great benefits that it could not have been brought forth more or greater benefits if it had been instituted, primarily and chiefly, to further the prosperity of life here on earth.¹⁵⁶

This is, in Murray’s words, “the traditional paradox.”¹⁵⁷

Murray attempts to explain, and, at least to some extent, resolve, this ambiguity by taking into account the “hint of triumphalism” present in the first half of chapter forty-one of *GS*, as well as its mitigation by the second half of this chapter. Murray sees a misplaced confidence in the chapter when *GS* presumes that Church not only brings the light of progress and virtue to its own members, but also to the world as a whole. He also detects, in the final account, *aggiornamento*: “From now on, the Church defines her mission in the temporal order in terms of the realization of human dignity, the promotion of the rights of man, the growth of the human family towards unity, and the sanctification of the secular activities of this world.”¹⁵⁸ Murray’s reading of *GS* seems commensurate with Augustine’s belief that members of the Church bore some responsibility for the welfare of the secular world. *GS* sees the church playing a

¹⁵⁵ John Courtney Murray, “Church and State at Vatican II,” 599.

¹⁵⁶ *Ibid.*, 600.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*, 601.

fundamental role within secular society. The difficult knot to unwind was, as it still is now, how the Church ought to articulate ultimately spiritual goals to a people who may not be particularly spiritual. Further complicating the matter is the implied futility of any effort to improve secular society that is not first rooted in a manifestation of Christian virtue begotten by Christ.

A Growing End: Murray's Critique of *Gaudium et Spes*

Throughout his essay on the issue of Church and state at Vatican II, Murray remains optimistic. However, in considering *GS*'s treatment of "the political community," Murray calls the document "uninspired and inadequate."¹⁵⁹ The fundamental complaint of Murray stems from the assertion that there is no mention of the need for those governed to provide their consent to their governors. He notes that "mention is made of the 'pluralist society' (an almost last-minute addition to the text) [and it is] this type of society [which] gives rise to today's problem of the relations of Church and state."¹⁶⁰ Murray faults the document for failing to make a "firm affirmation that the pluralist society presents not only the normal but the normative context for any theories of these relations."¹⁶¹ He asserts that pluralism is not only the typical situation of the political state, but also, for the governed peoples themselves, the desired situation. Though *GS* did not admit this, Murray believes that the document ought to have done so. However, Murray is not prepared to completely dismiss the efforts of *GS* on this topic. He locates hope in paragraph seventy-six which notes that the Church is "at once the sign and the safeguard of the transcendental dimension of the human person."¹⁶² This supposition by *GS* underlines for Murray the notion that the "essential basis of the Church's claim to freedom in the face of all

¹⁵⁹ Ibid., 602.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

public powers” is precisely its ability to lead the human community to a greater awareness.¹⁶³ In his analysis, Murray determines that *GS* is willing to accept the “secularity of the secular order,” yet simultaneously maintains that that this same order ought to be open to religious values.¹⁶⁴ Other works by Murray will suggest that such a relationship is improved when religious values are communicated in a manner intelligible to the secular order, through a persuasive, rather than coercive manner.¹⁶⁵

In his concluding comments, Murray reflects upon the true nature of the Church’s mission in secular society: the primary locus of the Church remains, and always has been, spiritual, yet there has been growth by the Church in its responsibility to the secular realm. Moreover, this relationship is now conceived in a more balanced way: conversion of people and establishment of the Church’s rights are no longer the order of the day after *GS*. Murray reasons that “the mode of entrance is purely spiritual, since it takes the form simply of moral judgment on political affairs, and since the grounds of judgment are metapolitical, having to do with the rights of man and the salvation of souls.”¹⁶⁶ Murray cites paragraph seventy-six again, because here *GS* notes that the Church “never places its hopes in any privileges accorded to it by civil

¹⁶³ Ibid.

¹⁶⁴ Ibid., 603.

¹⁶⁵ For a recent appropriation of the idea of the proper level of “secularity” within the secular order, see Gregory Kalscheur, “A Response to Kenneth Garcia: Healthy Secularity and the Task of a Catholic University,” *Theological Studies* 73 (2012): 924-934. Of particular note is Kalscheur’s appropriation of Murray in this task: “In the wake of the Second Vatican Council, with its affirmation of what Murray called ‘a healthy secularity’ marked by a differentiation between the sacral and the secular in society, Murray described the task of the Catholic university in these terms: ‘It is to be the bearer of the new movement that will transcend the present dichotomy of the sacral and the secular, and it is to be the artisan of their new unity’” (Murray, “The Declaration on Religious Freedom: Its Deeper Significance,” *America* 114.17 (April 23, 1996) 592-93, at 593). And again: “An unhealthy secularism sees religion as something purely private, seeks to exclude religion from any public role in society, and presents itself as if it were the only voice of rationality” (925).

¹⁶⁶ John Courtney Murray, “Church and State at Vatican II,” 604.

authority; indeed, it will give up the exercise of certain legitimate rights whenever it becomes clear that their use will compromise the sincerity of its witness.”¹⁶⁷ As has been the case throughout the article, Murray attempts to highlight the doctrinal developments proposed by *Gaudium et Spes*, yet at the same time point to its continuity.

What is remarkable here is the seeming relevance of the previously examined material of Augustine for this topic. Indeed, Murray, as well as the Council, seemed to recognize that Augustine’s distinction between the heavenly and earthly cities, as well as the ambiguity inherent in their mutual successes and memberships, remain helpful in the modern world. Nevertheless, Murray also recognized the needed developments proposed by *GS*, while still reserving his ultimate judgment on the efforts of the Council because he believed it was neither specific nor far-reaching enough. Murray did applaud *DH* and *GS* because it was “clearly the mind of the Council that the institution of religious freedom is not hypothesis but thesis – a matter of doctrine, not of historical circumstance.”¹⁶⁸ He also concluded “new theological insights into the concrete reality of the pilgrim Church, and other new insights made available by secular experience (notably the experience of the relation between religious freedom as a human right and the freedom of the Church), have resulted in a genuine and fruitful development of doctrine.”¹⁶⁹ At the same time, Murray questioned why there was “no firm affirmation that the pluralist society presents not only the normal but also the normative context for any theory of these relations.”¹⁷⁰ Murray seemed to realize that for all of the value that the writings of Leo XIII and Pius XII had for the church/state problematic, they, like the Council Fathers, did not appear ready to fully accept the political realities of the modern world. Though “freedom” had

¹⁶⁷ *GS*, § 76.

¹⁶⁸ John Courtney Murray, “Church and State at Vatican II,” 596.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, 602.

been added in a papal pronouncement for the first time in a papal document in *Pacem in Terris*, the full import of this development had not yet been felt by the conclusion of Vatican II.¹⁷¹ In a sense, such a relationship still requires explication. For a final time, therefore, it is necessary here to draw the connection between Augustine's *City of God* and Murray's interpretation of *GS*: secular and religious knowledge interplay with each other on a series of levels. For one, those who hope for eternal life in the heavenly city witness to their hope in the earthly city; at the same time, people who are solely members of the earthly city possess the ability to teach and facilitate the ultimately Christian goal of growing an earthly city greater in virtue.

Simultaneously, the ultimate goals of the heavenly city remain both intertwined and separate from those of the earthly city: while the earthly city may only hope for virtue and peace, the heavenly city anticipates something either greater than temporal success. This does not, however, mean that those who ascribe their ultimate citizenship to the heavenly city do not bear a responsibility to secular society.

Murray concludes his analysis of *GS* by noting that a "work of systematization" of these themes remained to be done.¹⁷² It is this task to which I now turn. While an overall synthesis of the church/state problematic cannot be completed here, the remainder of Chapter Two focuses up on Murray's distinction between public and private morality in terms of proposed contraception legislation. Such an analysis will provide the reader with a sense of how Murray thought the abovementioned systemization may be undertaken. After the treatment of Murray, I will then take up the question of how Murray may have responded to the matter of legalized procured abortion in an effort to form a case study regarding Catholic approaches to this same matter in Chapter Three.

¹⁷¹ John Courtney Murray, "Things Old and New in 'Pacem in Terris.'"

¹⁷² John Courtney Murray, "Church and State at Vatican II," 606.

Murray on Contraception

After being directed by his Jesuit superior to cease writing about religious freedom in the late 1950s due to pressure from the Vatican's Holy Office, Massachusetts Senator John F. Kennedy's presidential campaign persuaded Murray, after conversations with the publisher of Sheed and Ward, to gather together a series of essays regarding the matter of religious pluralism in America.¹⁷³ In this work, Murray sought to not only explain why Catholics ought not be object of suspicion when engaging in public affairs, particularly in elected office, but also to execute a great end-run around the Protestant establishment by making the case that Catholics were actually the group *most suited* to carry on the legacy of the Founding Generation. Murray attempted to energize a generation of Catholics to contribute to public debate precisely because their faith provided them with a suitable entry point into the American Proposition itself. Murray claimed:

The point here is that Catholic participation in the American Consensus has been full and free, unreserved and unembarrassed, because the contents of this consensus – the ethical and political principles drawn from the tradition of natural law – approve themselves to the Catholic intelligence and conscience. Where this kind of language is talked, the Catholic joins the conversation with complete ease. It is his language. The ideas expressed are native to his [sic] own universe of discourse. Even the accent, being American, suits his tongue.¹⁷⁴

Murray makes this point emphatically because he realized how sensitive an argument he was making: not only did he argue for the desirability of Catholic participation in the American

¹⁷³ Donald Pelotte, *John Courtney Murray: Theologian in Conflict*, 75-7.

¹⁷⁴ *WHTT*, 55.

nation, but, because of the epoch in which he wrote, Murray pinned the overall feasibility of Catholic participation in pluralistic democracy on its ability to cohere in the American context. This line of reasoning forms the kernel of Murray's argument, because it suggests that, rather than being alien dwellers in a land of religious toleration and pluralism, Catholics actually bear the greatest chance of employing a political vocabulary intelligible to all participants in the national conversation.¹⁷⁵ Moreover, if Catholics are able to function in this American context, it stands to reason that they may continue to do so elsewhere even if Catholicism is no longer protected by concordat or implied political preference.

Murray published *WHTT* before "Government and the Order of Religion," but the former's particularly American context marks it as more appropriate to be considered now. *WHTT* considers general ideas of religious freedom and the need for a public consensus – one that actually encourages debate, rather than cursory agreement. It also defines the First Amendment as an "article of peace" and thus as a matter "not [of] true dogma but only good law."¹⁷⁶ The First Amendment exists in order to protect the peace of civil society; it does not rise to the level "article of faith" which, being a dogmatic position, compels assent from the Christian.¹⁷⁷ Murray believed the First Amendment to be good law precisely because it maintained peaceful conditions with the political context of America; at the same time, Murray did not admit the First Amendment to be an "article of faith" in and of itself, because to do so

¹⁷⁵ Muslim scholars have also attempted to find points of contact between their own tradition and the writings of Murray. For one such example, see Iain T. Benson, "The Search for Pluralism in the Writings of Said Nursi and John Courtney Murray: Prophetic Pluralism in Islam and Roman Catholicism," 19 September 2013, accessed <http://ssrn.com/abstract=2328381> or <http://dx.doi.org/10.2139/ssrn.2328381> on 11 December 2013.

¹⁷⁶ *WHTT*, 69.

¹⁷⁷ See Chapter 2 of *WHTT*: "Civil Unity and Religious Integrity," 59-86 for Murray's definition of "articles of peace" and "articles of faith."

would insert a “religious test...into the Constitution.”¹⁷⁸ In plain terms, then, Murray claimed that the matter of belief in the universal non-desirability of the First Amendment was not necessary to be a good American, but rather only admission in the local context that this same Amendment served the common good in the American circumstance. Murray phrased things in this manner to protect himself against assertions of indifference in the religious sense, and of theocracy in the political sense. The Catholic, Murray thus reasoned, may hope for a truly Catholic nation, but must be satisfied in the short term with his or her efforts in a pluralistic nation. Murray spends the last two-thirds of *We Hold These Truths* examining particular policy issues in this context. “There seems to be sufficient reason for thinking that the American mind has never been clear about the relation between morals and law,” begins Murray’s argument in the second of his four “unfinished arguments” in *We Hold These Truths*, entitled “Should There Be a Law?”¹⁷⁹ There are two ways in which this confusion manifests itself. The first proceeds from the mistaken assumption that whatever is morally wrong should be subject to legal intervention. Murray frames this as “the reformer’s constant shout: ‘There ought to be a law!’”¹⁸⁰ Clarifying further, he describes this instinct as “[revealing] the failure to grasp the difference in order between moral and civil statutes.”¹⁸¹ Such a mistake, according to Murray, begets another: “If what is moral ought by that fact to be legal, it follows that what is legal is by that fact also moral.”¹⁸² The confusing of morality and law thus deprives both of their proper positions within civil society, and, as a result, robs each of their respective meanings.¹⁸³

¹⁷⁸ Ibid., 66.

¹⁷⁹ Ibid., 150.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

In order to illustrate the consequences of this confusion, Murray highlights the Connecticut birth control laws adopted in the 1870s.¹⁸⁴ He classifies them as a “characteristic Comstockian-Protestant ignorance of the rules of traditional jurisprudence.”¹⁸⁵ By this, Murray means that this law “transposes without further ado a private sin into a public crime.”¹⁸⁶ The takeaway for Murray is that the inability to distinguish between legality and morality is nothing less than disastrous:

The result is a fiasco of all morality. From the foolish position that all sins ought be made crimes, it is only a step to the knavish position that, since certain acts (like the private use of contraceptives) are obviously not crimes, they are not even sins. Upon a foolish disregard of the distinction between private and public morality there ensues a knavish denial that there is any such thing as public morality.¹⁸⁷

These reflections feed into Murray’s larger discussion regarding the general principles of censorship. The intricacies of these matters do not concern us here, but the basic conclusions at which he arrives do. These principles speak directly to the “issue of social freedom,” whereby one must “[strike] a right balance between freedom and constraint in society.”¹⁸⁸

Murray sees a great danger in the “over-moralization” of the law: “men [sic] can be only coerced into a minimal amount of moral action.”¹⁸⁹ This reality, however, does not mean that morality ought be absent from the public square. Far from it! Indeed, Murray unequivocally

¹⁸⁴ Ibid. Murray quotes the law in full: “*Use of drugs or instruments to prevent conception.* Any person who shall use any drug, medical article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days no more than one year or be both fined and imprisoned.”

¹⁸⁵ Ibid., 151.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid., 153.

¹⁸⁹ Ibid., 158.

believed that Catholics – like any members of a minority group – have the right to make their moral positions known. Nevertheless, such groups may only “work toward the elevation of standards of public morality in the pluralist society, through the use of the methods of persuasion and pacific argument.”¹⁹⁰ These same groups do not have “the right to impose [their] own religious or moral views on other groups, through the use of force, coercion, or violence.”¹⁹¹ It is also the prerogative of such a group, while exercising prudence and paying attention to the public consensus, to influence the “standards and content of public morality.”¹⁹² The distinction between public and private morality is thus construed as something largely determined by prudence,¹⁹³ not only in weighing the possibility of successful passage of a piece of moral legislation, but also in the recognition about how certain efforts undertaken by the church may be perceived, marking it as either a “power-association” or begetting the “visage of the Church as God’s kingdom of truth and freedom, justice and love.”¹⁹⁴

The value of Murray’s comments regarding the law and morality is that they distinguish between the proper attitudes toward public and private morality. Legislating public morality, in accord with the public consensus (not necessarily the majority) is sometimes a necessary evil: doing so, however, ought be rare and its reach modest. Formulating coercive law to engage citizens over matters of private morality is, however, a problematic overreaching. To act this way in the public square may indeed bring about consequences previously unconsidered. In the final account, Murray proposes an honest epistemological approach to the legislation of morality and the church’s approach therein. In a very real sense, such intellectual honesty provides

¹⁹⁰ Ibid., 160

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ For a basic theological understanding of prudence, see Thomas Aquinas’ *Summa Theologica II-II, Q. 47*.

¹⁹⁴ WHTT, 162.

infrequent moralizers with more rhetorical power, since their forays into the border grounds between private and public morality will be rare. Thus, interventions would, in and of themselves, highlight certain issues as graver than others.

In the 1960s the Massachusetts State Legislature considered legislation that would decriminalize the sale, mailing, and supplying of artificial contraception. Cardinal Richard Cushing of Boston contacted Murray to ask for advice regarding the Catholic Church's official response to such a repeal.¹⁹⁵ It should be noted at the outset that Cushing accepted Murray's recommendations.

Murray began his response to Cushing by stating, "Catholics may and should approve [the contraception] amendment."¹⁹⁶ Murray arrived at these conclusions for two specific reasons: namely the "differential character of law and morality and on the distinction between public and private morality," and "the concept of religious freedom."¹⁹⁷ The first of these arguments is reminiscent of many of Murray's arguments in *We Hold These Truths*. In the memo to Cushing, Murray opines "It is not the function of civil law to prescribe everything that is morally right and to forbid everything that is morally wrong...the scope of law is limited to the maintenance and protection of public morality. Matters of private morality lie beyond the scope of law; they are left to personal conscience."¹⁹⁸ Issues of public morality are restricted to those which "seriously [undermine] the foundations of society or gravely [damage] the moral life of

¹⁹⁵ John Courtney Murray, "Memo to Cardinal Cushing on Contraception Legislation," in *Bridging the Secular and the Sacred*, Ed. J. Leon Hooper, (Washington, DC: Georgetown University Press, 1994) 81-86. While Murray's response was not published at the time, it was later included in a collection of Murray's writings and provides significant insight into his thinking regarding the matter in question.

¹⁹⁶ *Ibid.*, 81.

¹⁹⁷ *Ibid.*, 82; 84.

¹⁹⁸ *Ibid.*, 82

the community as such.”¹⁹⁹ It is in these situations, Murray continues, that positive law is required to be written and employed, precisely because an overarching law is needed to protect the common good.²⁰⁰ Theologically speaking, Murray seems to anticipate a key passage in *DH*: “In availing of any freedom men must respect the moral principle of personal and social responsibility.”²⁰¹ At the same time, “civil society has the right to protect itself against possible abuses committed in the name of religious freedom the responsibility of providing such protection rests especially with the civil authority.”²⁰² Moreover, “All these matters are basic to the common good and belong to what is called the public order.”²⁰³ *DH* §7 concludes, “man’s freedom should be given the fullest possible recognition and should not be curtailed except when and in so far as is necessary.”²⁰⁴ This is the bind in which Murray found himself – and one out of which Catholic politicians have not yet escaped today: *DH* recognized *both* that “respect for the dignity of the human person in no way depends on whether or not the person’s beliefs or actions are in accord with religious or moral truth,” while still opining that “the exercise of responsible freedom is, indeed, oriented toward the truth.”²⁰⁵

The appropriate situations in which legislation ought be enacted to enforce public morality further narrow the scope for such action. Murray reasoned that the effectiveness of coercive law vis-à-vis morality is so low that the very unlikelihood of its success ought make

¹⁹⁹ Ibid.

²⁰⁰ Ibid., 83

²⁰¹ *DH*, §7

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Gregory Kalscheur, “Moral Limits on Morals Legislation: Lessons for U.S. Constitutional Law from the *Declaration of Religious Freedom*,” *Southern California Interdisciplinary Law Journal* (2006), 9.

society loathe to employ it.²⁰⁶ Indeed, since the American Proposition itself is founded on a certain amount of personal freedom, Murray invoked what he called the jurisprudential principle: “As much freedom as possible, as much restriction and coercion as necessary.”²⁰⁷ This principle, it ought be noted, is grounded in the need to protect human dignity as a matter of natural law, and thus is embedded with the American Proposition itself. This axiom, however, is not invoked without serious consideration. Murray continues:

Again, by reason of the function of law, there must be a reasonable correspondence between the moral standards generally recognized by the conscience of the community and the legal status concerning public morality. Otherwise laws will be unenforceable and ineffective and they will be resented as undue restrictions on civil or personal freedom.²⁰⁸

The above caveat to Murray’s freedom/restriction axiom is instructive: there are times when immoral conduct ought not be subject to restrictive legislation, precisely because those subject to the legislation do not possess the moral standards to attempt to follow the law in good faith.

Murray argues that it is neither because of contraception’s widespread use, nor its general acceptance by the public, that the Church ought not stand in the way of the contraception amendment. Rather, it is the widespread acceptance of contraception by other religious communities that bears heavily upon the situation. Indeed, “it is difficult to see how the state can forbid, as contrary to public morality, a practice that numerous religious leaders approve as morally right.”²⁰⁹ Murray opines that even if contraception is considered an issue of public morality since it possesses “public consequences,” it still cannot be adequately “controlled by

²⁰⁶ John Courtney Murray, “Memo to Cardinal Cushing,” 83.

²⁰⁷ *Ibid.*, 82.

²⁰⁸ *Ibid.*, 83.

²⁰⁹ *Ibid.*

law.” Consequently, in the second half of his memo, Murray builds his argument upon the “right of moral judgment on the legal order and its statutes,” as exercised by the Church in a negative sense. That is to say, the Church may note the immorality of laws, but does not normatively make positive judgments upon the morality of legislation.²¹⁰

Murray summarizes his memo to Cushing by outlining two important distinctions that Catholics should make: First, “Catholics maintain contraception to be morally wrong;” secondly:

Out of their understanding of the distinction between morality and law and between public and private morality, and out of their understanding of religious freedom, Catholics repudiate a resort to the coercive instrument of the law to enforce upon the whole community moral standards that the community itself does not commonly accept.²¹¹ In the absence of legal coercion, Murray suggests that Catholics attempt to lift standards of public morality themselves through “the integrity of their Christian lives.”²¹²

The practical application of Murray’s philosophy regarding public and private morality is found within his memo to Cardinal Cushing. He articulates the jurisprudential principle of maximizing freedom, while minimizing coercion. At the same time, Murray draws a practical distinction between public and private morality, recognizing that the bellwethers for public morality – religious communities – heavily bear upon the public credibility of moral legislation. Murray concludes that since morals legislation may often backfire, it is incumbent upon the Christian community to live lives worthy of moral witness; moreover, it may be further deduced that part

²¹⁰ Ibid., 85.

²¹¹ Ibid., 85-86.

²¹² Ibid., 86.

of this witness comes from articulating a coherent public philosophy for both matters of public and private morality in the public square.

Segers and Whitmore: Extrapolating Murray

In an essay published in 1996, Joseph Komonchok questioned those who took issue with John Courtney Murray's attempts to construct a public philosophy. He noted:

many criticize [Murray's] choice to undertake construction of a public philosophy in [a] general essay of a methodological nature, without much effort to show how their own views translate into a relevant and effective public *theology* that permits genuine civil conversation and cooperation with believers and non-believers.²¹³

Komonchok challenged detractors of Murray's principles to move beyond a diagnosis of his short-comings and propose a "publicly available and relevant solution" to contemporary matters of public policy.²¹⁴ In response to his own challenge, Komonchok suggests that "instructive lessons" might be gathered from "essays that deal with Murray's method and the question of abortion today."²¹⁵ Taking Komonchok at this word, we now turn our attention to the essays of Mary Segers and Todd Whitmore.

Mary Segers attempts to develop sound public policy for Catholics who wish to publically engage the topic of abortion. Segers asserts that "undoubtedly Murray would have been challenged profoundly by the abortion issue, since it, perhaps more than any other contemporary issue, poses fundamental questions about his view of an American public

²¹³ Joseph Komonchak, "John Courtney Murray and the Redemption of History: Natural Law and Theology," *John Courtney Murray and the Growing End*, Eds. J. Leon Hooper and Todd Whitmore, (New York: Sheed and Ward, 1996) 80.

²¹⁴ Ibid.

²¹⁵ Ibid., 81, n.24.

philosophy based on rational deliberation and consensus.”²¹⁶ In order to draw tentative conclusions as to how Murray may have responded, Segers proposes Murray’s writings on contraception as the prime analogue.²¹⁷ Segers first hones in on Murray’s contention that sinfulness and legality are not equivalent in the public square, as well as upon his assertion that legal permissibility does not make an act morally appropriate. Segers praises Murray because his philosophy “created space for groups such as Catholics to respect their Church’s teachings against artificial contraception and yet refuse to impose through civil law that conviction of private morality on non-Catholic Americans.”²¹⁸ What is more, Murray understood “public policy must meet at least minimal standards of consent in order to be enforceable.”²¹⁹ These understandings received further clarification through Murray’s articulation of the difference between matters of public and private morality in his memorandum to Cardinal Cushing. This distinction provides a method to project a possible response of Murray to legalized abortion.

Without a doubt, Segers writes, Murray would have “[defended] the right of the Roman Catholic Church and other churches to address the moral dimensions of public policy officially and to contribute to the public debate about the morality and legality of abortion.”²²⁰ The goal of these efforts, in Murray’s mind, would be for an “agreement about what is right and just...from rational deliberation about public affairs.”²²¹ At the same time, Catholic attempts to engage in this deliberation would be best phrased “in the language of reason and natural law, not in the

²¹⁶ Mary C. Segers, “Murray, American Pluralism, and the Abortion Controversy,” in *John Courtney Murray and the American Civil Conversation*, Eds. Robert P. Hunt and Kenneth Grasso, (Grand Rapids, MI: Eerdmans, 1992) 229-230.

²¹⁷ Ibid., 230.

²¹⁸ Ibid., 235.

²¹⁹ Ibid., 236.

²²⁰ Ibid., 241.

²²¹ Ibid., 242.

language of biblical ethics or Gospel norms.”²²² Consequently, Segers reasons that “if Catholic Church officials wish to shape public consensus on abortion policy, they can only do so through appeals to reason in the language of secular, nontheistic ethics.”²²³ Given this preliminary work, Segers identifies two questions that may be put to Murray: “(1) Were Murray with us today, would he favor the use of coercive law to prohibit or severely restrict abortion and (2) How might he advise American Catholics to approach the question of abortion policy in the United States?”²²⁴ Segers responds to these two questions with direct answers. The first pertains to the matter of whether abortion is a matter of public or private morality. More specifically, she notes that “if the fetus is defined as a human being from conception ... abortion is a public issue, a matter of public morality, because it affects another party, a human being who cannot be consulted but whose interests deserve protection as a matter of justice.”²²⁵ Segers notes that the *Declaration on Procured Abortion* confirms the absolute sanctity of life not because it is certainly life, but because it is either life *or* may reasonably be thought to be life. This difference is important to Segers because she uses it to consider abortion in terms of its risks to *possible* human life, rather than as *direct* destruction of human life.²²⁶

Segers continues her reflections by noting that Catholicism’s complete prohibition of abortion places it in the clear minority of public opinion. Correspondingly, she supposes that Murray would be “loath to use the force of coercive law to impose a distinctly minority view on the citizenry.”²²⁷ Murray may have originally hoped for a public consensus to develop in a situation such as this one, but since this has not been achieved Segers argues that “middle-ground

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid., 243.

²²⁵ Ibid.

²²⁶ Ibid., 243-4.

²²⁷ Ibid. 244.

positions” may be the next best thing. Of course, in light of Catholic teaching, many of these compromises are unacceptable. For instance, she considers “abortions in the difficult circumstances of rape, incest, [and] fetal deformity.”²²⁸ Segers also reflects upon the argument of the woman’s autonomy in making the decision to carry the fetus to term. Drawing upon Murray’s bifurcation between public and private morality, Segers offers a three-fold comparison between contraception in the 1960s and abortion in the 90s: both practices are widespread; many do not consider the practice in question morally wrong; and many religious groups find neither contraception nor abortion (to varying degrees) unacceptable. These similarities, allow Segers ask Murray “whether restrictive laws against abortion would unjustifiably restrain the religious freedom of other non-Catholic Americans.”²²⁹ Segers answers this question in the affirmative, and then shifts to another inquiry: “If it would be imprudent and possibly intolerant for the American Catholic Church to use to the coercive power of the law to enforce its moral teaching against abortion, what role might it appropriately play in the abortion controversy?”²³⁰ Segers posits that “[were] Murray alive today I think he would stress the Church’s positive role in society rather than its political role in shaping a more restrictive abortion policy.”²³¹ In the final account, Segers reasons that Murray would have both “stressed legal efficacy and enforceability in approaching the question of legislating morality ... [because] he was respectful of religious liberty and tolerant of religious differences in a free society.”²³²

Mary Segers rests the burden of her argument upon two factors: the accuracy of her analogy between contraception legislation in the 1960s and abortion in the present time, and the

²²⁸ Ibid., 245.

²²⁹ Ibid., 247.

²³⁰ Ibid.

²³¹ Ibid.

²³² Ibid., 248.

alleged uncertain status of the unborn fetus which may, in fact, suggest that abortion is a matter of private morality. As such, she believes that John Courtney Murray would have erred on the side of caution when it came to this matter. She further believes that Murray would have counseled against legislating moral conduct from the position of a religious minority. As we will see, using roughly the same approach, Todd Whitmore presents a contrasting position.

In an article published a year after Segers' essay, Todd David Whitmore took to the pages of *Commonweal* to ask: "How is one to enter into dialogue in a pluralistic society while remaining true to one's own religious or moral tradition?"²³³ Similarly to Segers, Whitmore attempts to use Murray's work regarding contraception as a means of projecting what Murray might have said about Catholic approaches to public policy and abortion. Whitmore departs from the conclusions reached by Segers in several important ways. First and foremost, Whitmore suggests that Segers misread Murray's definition of consensus. It is not – as Segers claims – a matter of public opinion. Whitmore cites chapter four of *We Hold These Truths*, recalling, "The validity of the consensus is radically independent of its possible status as either majority or minority opinion."²³⁴ Such an assertion, Whitmore claims, is based on a realist epistemology wherein "moral truths are grounded in the structure of reality itself."²³⁵ As a consequence of this worldview, the opinions held by the majority of political leaders are not the sole indicators of the rightness or wrongness of the matter.²³⁶ Whitmore, recalling these epistemological bases, presents a tightly woven argument that, for the sake of clarity, ought to be quoted in full:

²³³ Todd David Whitmore, "What Would John Courtney Murray Say?: On Euthanasia and Abortion," in *Commonweal*, (October 7, 1994) 16.

²³⁴ *Ibid.*, 17.

²³⁵ *Ibid.*

²³⁶ *Ibid.*, 18

Murray's realist epistemology is of particular import for the issue of abortion. If it is descriptively true, as official Catholic teachings say, that the embryo-fetus is, in all probability, a human person, then the presumption must be that it is also morally true that one ought not take a life. Moreover, if the embryo-fetus is in all probability a person, then the presumption must also be that abortion is a matter of public morality: a human life is at stake. Finally, if the embryo-fetus is in all probability a person, then taking its life would not be a matter of religious liberty. Religious freedom has limits.²³⁷

These three points cut to the heart of Whitmore's argument, providing a compelling case for the status of abortion as a matter of public morality – if! If, of course, one accepts the teaching of the Catholic Church that from the moment of conception the fetus is human life; or, failing that, one admits that the likelihood of the existence of human life in the womb at one point or another makes this matter a subject of public morality. The latter argument, of course, allows for a more nuanced debate and involves gradations of moral judgment that exist outside the direct scope of this paper.

Whitmore's line of reasoning creates three requirements for constructing a "Murray argument" regarding public policy and abortion: (1) Catholic teaching regarding abortion is true, (2) abortion is thus a matter of public morality, and, as a consequences of this, (3) laws restricting abortion are appropriate.²³⁸ From here, Whitmore engages Segers' discussion regarding the difficulty of legislating morality. Again, there exists a difference of opinion, because for Whitmore, though "the presumption is that matters of public morality should be addressed by the law, the relationship between the two is not a one-to-one correspondence."²³⁹

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid., 19.

He continues, “The public may not be ready to receive a law that simply mirrors what is morally true.” In this sense, Whitmore faithfully interprets Murray, whose suggested hesitation in legislating public morality is based itself largely in the reality that such efforts were not, simply put, effective. Whitmore’s diagnosis also makes plain that the two most vociferous sides of the abortion debate have digressed from Murray’s outline for public debate. “One side claims that (objective) morality ought to be translated directly into law,” Whitmore writes, “while the other side counters that (private) morality and law are utterly separate.”²⁴⁰ The solution for Whitmore, in this case, is different from Segers, but, in his own mind, equally clear: “the two [morality and law] need to be brought closer together; that is, law must be brought closer to objective morality if the two are to remain in relationship.”²⁴¹ Whitmore explains that simply changing laws will be ineffective, since it will only breed contempt as abortions rights are curbed. At the same time, to sit idly abdicates the responsibility Catholics possess to provide public witness of their faith – especially when matters of public morality affect a certain voiceless population. In order to do this, Catholics “need to help shape public opinion so as to reduce the distance between American law and Catholic teaching on abortion. Law itself is a bad vehicle for this.”²⁴²

Segers and Whitmore concur on the need for the Church itself to provide a clearer witness to Christian *praxis* (beyond repetition of belief). Nevertheless, Whitmore moves past Segers’ position by arguing “from the perspective of a tradition that seeks to keep law and morality related, aiding woman is not an alternative to law; [such aid] is, among other things, the concrete precondition for bringing morality and law closer together.”²⁴³ In other words, Whitmore believes that solely using legislation to be an insufficient remedy to the matter of

²⁴⁰ Ibid., 19.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

abortion: rather, Christian action is also necessary. Whitmore's suggestion, though closer (at least in my opinion) to a more faithful reading of Murray, cannot prescribe specific legal and moral goals – and he admits as much. He leaves two important questions for further discussion on this topic: “In comparison to the laws in place, does it move in the direction of a greater harmony between Catholic teaching on objective morality on one hand, and law, on the other? Have we as a church been successful in helping to shape a society where a more restrictive law is plausible?”²⁴⁴ In the final section of this paper, I will make an attempt at providing more specific suggestions as to how Catholics may answer these two questions by being authentic to their own tradition while also arguing in a manner intelligible to our pluralistic society.

Conclusion

This chapter began by examining elements of John Courtney Murray's work regarding the relationship between the church and state. It first took up a representative example of Murray's pre-conciliar work in which he analyzed Leo XIII's writings on the Church/state relationship and attempted to distill a series of principles to be applied to this dynamic, as well as questions that could serve the heuristic task of determining how Catholics ought to approach topics that sit at the crossroads of public and private morality. Next, I analyzed Murray's approach to *Gaudium et Spes*, seeking to better understand the manner in which he developed the church/state problematic. Murray saw definite theological progress here, since the document took seriously the need for Christian participation in the secular realm. Despite this positive development, Murray critiqued *GS* because it did not fully recognize its historical situation: religious pluralism had not only become commonplace, but it had also become the preferred

²⁴⁴ Ibid.

political model. Murray recognized that in *GS* the Church began to recognize this reality, he did not believe the document clearly understood that such political shifts were normative – and that such a change was positive. Subsequently, I turned my attention to the work Murray did in *We Hold These Truths* regarding the distinction between public and private morality and how this manifested itself in Murray’s treatment of the Church’s public stance regarding contraception. Finally, I examined the work of Todd David Whitmore and Mary Segers. Whitmore and Segers speculate as to how Murray would have configured a Catholic response to attempts to legalize procured abortion.

Chapter One concluded with a question regarding the proper action of the Church within the overarching political environment of the State vis-à-vis Murray’s influence and thought. This second chapter recognized a twin development of the problematic: the first involves the development of Catholic doctrine regarding the matters of freedom and proper action within the state; the second is more localized: the difficulty in legislating matters of public morality in a pluralistic state. The analysis provided of these two intertwined issues points toward Murray’s brilliant turn of the phrase in the essay he wrote regarding *GS* and *DH*: “the Church may neither be enclosed within the political order nor be denied her own mode of spiritual entrance into the political order.”²⁴⁵ Murray argued that the role of the Church in the world was to “signify and safeguard the transcendence of the human person [and] likewise to signify and further the unity of the human family.”²⁴⁶ With this in mind, it is now appropriate to turn to actual examples of how Catholics involved in public debate regarding abortion have attempted to both safeguard the rights of the individual while at the same time promoting and protecting unity in a pluralistic state. As we will see, these two values are often competing and emphasis on one often comes at

²⁴⁵ John Courtney Murray, “The Issue of Church and State at Vatican II,” 602.

²⁴⁶ *Ibid.*, 603.

the expense of the other. The success of Chapter Three, then, will not come in finding a proper balance of individual and communal interests, but rather in noting the points of emphasis in each argument examined. Such an analysis will lead to some considerations as to how a new “Catholic” moment may be achieved.

Chapter 3: Catholic Voices in the Public Square

Introduction

The analysis provided by Chapter Three concludes the majority of the work set out in the Introduction. The individual analyses provided herein are not exhaustive in any sense of the word. Rather, the material contained in this chapter ought to be considered the first step in appropriating the work of John Courtney Murray in such a manner as to lay the groundwork for a new “Catholic moment.” Each of the three figures reviewed in this chapter engaged the matters of public philosophy about which Murray wrote, though they did not do so in altogether similar ways. The appropriation of the ideas of Murray – implicitly or explicitly – is not a simple task, because Murray provided philosophical entry points into thinking about the position of Catholics in the public square, but not specific policy recommendations. Indeed, my review of the work of Segers and Whitmore in the last chapter should highlight this reality. Both authors claimed to speculate what Murray’s position on procured abortion would have been using his own words, yet their conclusions differed in significant respects.

The following pages will examine and analyze comments made by John F. Kennedy, Mario Cuomo and Henry Hyde, seeking out the influence of Murray in their words. The goal is to chart a course through Catholic sectarianism and religious indifferentism, searching for clues as to how Bernardin’s wish for a “new moment” in Catholic thought may be achieved. The conclusion of this chapter will point out areas of both synthesis and discontinuity among these three Catholic politicians. The goal here is not to place each entry into congruous harmony with one another, but rather to illuminate the richness of the Catholic discussion regarding the Church’s place within secular political discourse. The conclusion of this chapter will take up the final task of attempting to point out a few paths that may be pursued in the future: in other words,

while the majority of this work has been engaged in a diagnostic task of sorts, the conclusion will prescribe the beginnings of some possible paths forward.

Senator John F. Kennedy: The Candidate

In 1960, then-Senator and Democratic nominee for President, John F. Kennedy of Massachusetts delivered what many considered to be *the* defining speech for Catholics who wished to run for offices with national influence.²⁴⁷ While the brief speech ran just over eleven minutes, Kennedy's remarks fundamentally changed the manner in which Americans were to interpret the religious beliefs of their political leaders. Or, if perhaps this reaches too far, then at the very least, it must be admitted that Kennedy, whether he knew it or not, articulated an enduring paradigm for the manner in which one's religious views could be presented in the public square. Kennedy, a Catholic locked in a tight race with the Republican nominee Richard Nixon, believed he needed to clearly demarcate the role his Catholic faith would play in a presumptive Kennedy White House. Kennedy drew upon his legislative record in the Senate to make this point, and then some. The speech appears to have been a success: Kennedy defeated Nixon and entered the White House as the first Catholic president, largely relegating the previous Catholic nominee, Al Smith of New York in 1928, to the status of a historical footnote.²⁴⁸ Of course, the extent to which Kennedy's speech affected his ultimate victory is open to debate. Nevertheless, the historical memory of the nation recalls this speech as a watershed moment in the history of American politics and religion.²⁴⁹ In the same nation that had made Paul Blanchard's anti-Catholic screed, *American Freedom and Catholic Power*, a best-

²⁴⁷ John McGreevy, *Catholicism and American Freedom*, (New York, NY: W.W. Norton, 2003) 213-4.

²⁴⁸ Ibid.

²⁴⁹ William McKenzie, "JFK's Big Legacy on Religion," *Boston Herald*, 10 November 2013.

seller just a few years earlier, Kennedy won the presidency by one of the closest margins in American political history.²⁵⁰ Kennedy's speech before the Houston Ministerial Association described a manner of living one's faith in the public square that minimized the importance of individual faith by positing that this same faith ought bear little upon the public policy decisions one made.

John Kennedy framed his speech to Baptists ministers as one that he would rather not give. Throughout his remarks, Kennedy continually returned to the point that his Catholicism, at least in his own mind, should not distinctly mark his candidacy. And, if it did, that would be a function of the voters' and pundits' rejection of American values. In order to make this point more clearly, he spoke in strong terms regarding his view on the separation between Church and state:

I believe in an America where the separation of church and state is absolute--where no Catholic prelate would tell the President (should he be Catholic) how to act, and no Protestant minister would tell his parishioners for whom to vote--where no church or church school is granted any public funds or political preference--and where no man is denied public office merely because his religion differs from the President who might appoint him or the people who might elect him.²⁵¹

²⁵⁰ For an extended treatment of Paul Blanchard and anti-Catholic prejudice in the 1950s and 60s, see Mark Massa, *Anti-Catholicism in America: The Last Acceptable Prejudice* (New York, NY: Crossroads Publishing, 2005).

²⁵¹ John F. Kennedy, "Address to the Greater Houston Ministerial Association," 13 September 1960 accessed at <http://www.jfklibrary.org/Asset-Viewer/ALL6YEBJMEKYGMCntnSCvg.aspx#> on 10 March 2014.

In order to justify his emphasis upon the wall of separation – in the strictest sense – Kennedy directly referred to Virginia’s harassment of “Baptist preachers” and Thomas Jefferson’s subsequent articulation of religious freedom.²⁵²

Having first elucidated this logic, Kennedy continued to lay out the practical implications of religious discrimination. Herein is the true genius of Kennedy’s remarks: he described a scenario in which his religious beliefs should not disqualify him from a particular office precisely because these beliefs themselves would not affect his governance. Kennedy illustrated his belief that religion is purely a matter of private choice and, consequently, immaterial in consideration of political action. If, however, the religion/private, government/public bifurcation was breached, Kennedy warned, “Today I may be the victim- -but tomorrow it may be you--until the whole fabric of our harmonious society is ripped at a time of great national peril.”²⁵³ Kennedy continued, “I believe in a President whose religious views are his own private affair, neither imposed by him upon the nation or imposed by the nation upon him as a condition to holding that office.”²⁵⁴ This is the fundamental supposition Kennedy proposed for the role of religion in public. Kennedy’s speech made a particular point in reference to Catholics in the public square: the Pope would not offer the final word on matters of domestic or foreign policy. Kennedy emphasized this point:

²⁵² It is necessary to note that Kennedy’s interpretation is not without its critics. In fact, thinkers such as Sidney Mead and Dewolf Howe some years ago, and Michael Meyerson more recently, would argue that this separation is not nearly as all encompassing as one would have us think. These authors present an equally legally and historically rooted argument that the separation between church and state existed in order to protect the church from the meddling of the state, rather than the vice versa. For a more detailed treatment, see S.E. Mead, *The Nation with the Soul of a Church* (New York, NY: Harper and Row, 1975); Michael Meyerson, *Endowed by Our Creator* (New Haven, CT: Yale University Press, 2012); and Philip Hamburger, *Separation of Church and State* (Cambridge, MA: Harvard University Press, 2002).

²⁵³ John F. Kennedy, “Address to Houston Ministerial Association.”

²⁵⁴ Ibid.

I believe in an America where religious intolerance will someday end--where all men and all churches are treated as equal--where every man has the same right to attend or not attend the church of his choice--where there is no Catholic vote, no anti-Catholic vote, no bloc voting of any kind--and where Catholics, Protestants and Jews, at both the lay and pastoral level, will refrain from those attitudes of disdain and division which have so often marred their works in the past, and promote instead the American ideal of brotherhood.²⁵⁵

These sorts of statement made by Kennedy did not refer to religious beliefs as such. They actually spoke directly to the very nature of Catholic participation in the public square.

Kennedy believed his Catholicism compelled him to speak directly to how he had, as a member of the Senate, voted *against* what could be typically considered Catholic interests. A caveat, however, is necessary here: these particular issues do not correspond to “Catholic issues” in contemporary terms. Looking back, there is some irony about the issues Kennedy used to proclaim his independence from Church authority. Those he cited are ones that may be considered, at least today, somewhat tame in nature, relative to current debates over same-sex marriage and abortion: “I ask you tonight to follow in that tradition--to judge me on the basis of my record of 14 years in Congress--on my declared stands against an Ambassador to the Vatican, against unconstitutional aid to parochial schools, and against any boycott of the public schools (which I have attended myself).”²⁵⁶

As he continued his speech, Kennedy pushed further. Speculating as to how his administration might respond to one issue or another, the candidate claimed that

²⁵⁵ Ibid.

²⁵⁶ Ibid. John Courtney Murray addressed the topic of state support for schools with religious affiliation in *WHTT*. See *We Hold These Truths*, 139-148..

Whatever issue may come before me as President--on birth control, divorce, censorship, gambling or any other subject--I will make my decision in accordance with these views, in accordance with what my conscience tells me to be the national interest, and without regard to outside religious pressures or dictates. And no power or threat of punishment could cause me to decide otherwise.²⁵⁷

Again, to our contemporary ears such a statement may not strike a discordant note. What is fascinating, however, is Kennedy's citation of a document published by the United State Bishops in 1948 that he believed supported his views.²⁵⁸ In reference to this document, Kennedy remarked that "the statement of the American Bishops in 1948 which strongly endorsed church-state separation, and which more nearly reflects the views of almost every American Catholic" in fact coincided with his own position.²⁵⁹ This matter, as a full reading of the document in question suggests, was not as simple as Kennedy wanted his audience to think. In fact, the statement issued by the bishops reprinted in the *New York Times* bore the title "Statement by Catholic Bishops Attacking Secularism as an Evil": hardly a ringing endorsement for a higher wall of separation. The statement began: "Human life is centered in God. The failure to center life in God is secularism – which, as we pointed out last year, is the most deadly menace to our Christian and American way of living."²⁶⁰

The 1948 statement of the bishops attended to issues such as "religion in the home," "religion in education," and "religion in economic life."²⁶¹ Turning their attention to the link

²⁵⁷ Ibid. A key question that may be asked of this statement is how Kennedy conceived of his conscience being formed as a politician.

²⁵⁸ "Statement by Catholic Bishops Attacking Secularism as an Evil," *New York Times*, 21 November 1948.

²⁵⁹ John F. Kennedy, "Address to Houston Ministerial Association."

²⁶⁰ "Statement by Catholic Bishops Attacking Secularism as an Evil."

²⁶¹ Ibid.

between religion and the duties of citizens, the bishops sounded an Augustinian note, writing that “our history reveals the same fundamental connection between religion and citizenship. It is through law that the government exercises control over its citizens for the common good and establishes a balance between their rights and their duties.”²⁶² The bishops continued their social analysis by reading the First Amendment in a different manner than did Kennedy:

Under the First Amendment, the Federal Government could not extend this type of preferential treatment to one religion as against another, nor could it compel or forbid any state to do so...it would be an utter distortion of American history and law to make that practical policy involve the indifference to religion and the exclusion of cooperation between religion and government implied in the term “separation of Church and State” as it has become the shibboleth of doctrinaire secularism.”²⁶³

What, then, are we to make of Kennedy’s reference to the statement? The bishops, for their part, concluded that the Establishment Clause existed not to exclude religious belief from the public square, but to prevent the government from specifically privileging individual denominations.

The portion of the statement to which Kennedy referred, as best as one may determine, likely comes at its conclusion. There, the bishops, in reflecting upon the actual situation in the country, and the role that the church could play in it, stated “with deep conviction for the sake of both good citizenship and religion there should be a reaffirmation of our original American tradition of free cooperation between government and religious bodies – cooperation involving no special privilege to any group and no restriction on the religious liberty of any citizen.”²⁶⁴

The bishops then concluded: “We call upon our Catholic people to seek in their faith an

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

inspiration and guide in making an informed contribution to good citizenship.”²⁶⁵ The fact that Kennedy himself cited this document (apparently loosely), underlies the difficult situation in which the candidate found himself. Scrambling to assuage suspicions regarding his religious beliefs, Kennedy relied upon a document that, in and of itself, would likely have done little to allay these fears. Nevertheless, the document did give Kennedy enough rhetorical room to make the case that the American Catholic Church encouraged its citizens to engage in activities that supported the common good of the nation, not simply proselytization.

Kennedy concluded his speech with two other statements of note. He promised his audience that if he were presented with a situation that compelled him to violate his conscience or the national interest, he would resign.²⁶⁶ He also pledged that if he won the presidency, he could take the oath of office without hesitation.²⁶⁷ In a move that is as rhetorically powerful as it is theologically puzzling, Kennedy then read the oath of office itself, seemingly pausing for emphasis on the last phrase, “so help me God.”²⁶⁸ Here again one finds a distinctive partition in Kennedy’s logic: he appeared, on one hand, to be at pains to promise that his Catholic beliefs would not explicitly or implicitly affect his political decisions. On the other hand, Kennedy not only placed a heavy emphasis upon the effect that his conscience would have on his ability to even undertake the presidential office; he also emphasized his duty before God in discharging the presidency. It seems as if Kennedy sought a type of both/and route to political expediency. In achieving this, he worked a masterstroke that set the tone for Catholics in politics in the coming generations. Kennedy acknowledged the overall effect that religious belief has upon a person in a position of power, but also sought to minimize the ability of that same belief to compel the same

²⁶⁵ Ibid.

²⁶⁶ John F. Kennedy, “Address to Houston Ministerial Association.”

²⁶⁷ Ibid.

²⁶⁸ Ibid.

person to act in one way or another. Kennedy's speech attempted to indicate that the teachings of the Church could be separated from the individual practice of Catholicism. Kennedy laid claim to the basic religion notion of "God" as guiding the discharge of his political duties, while maintaining political independence from the church proper.

Cuomo and Hyde: Belief, Morality and the Place of Religious Values in America

The speeches given by Mario Cuomo and Henry Hyde, respectively, in 1984, are significantly longer than the previously examined one delivered by Kennedy. Consequently, I will avoid providing an extended summary of both sets of remarks, and rather focus on a few pertinent matters that show places of continuity and discontinuity with the Catholic tradition as previously formulated in Chapter One.

In his remarks titled "Religious Belief and Public Morality: A Catholic Governor's Perspective," Mario Cuomo set out a series of questions which he believed required answers in reference to his position as an American Catholic politician. Using the overarching theme of "loyalty" – in reference to both his religious beliefs and political duties as he construed them – Cuomo asked a series of questions:

Specifically, must politics and religion in America divide our loyalties? Does the "separation between church and state" imply separation between religion and politics? Between morality and government? Are these different propositions? Even more specifically, what is the relationship of my Catholicism to my politics? Where does the

one end and other begin? Or are the two divided at all? And if they're not, should they be?²⁶⁹

Cuomo sought to answer these questions through the prism of his “special responsibility” as an elected official.²⁷⁰ Though Catholic, he pledged to serve members of all faiths, even those who do not profess any faith at all. The goal of the politician in Cuomo’s estimation was to “create conditions under which all can live with a maximum amount of dignity and with a reasonable degree of freedom.”²⁷¹ Specifically, the Catholic politician – precisely because he or she presides over and within a pluralist democracy – ought uphold the situation “where everyone who chooses may hold beliefs different from specifically Catholic ones – sometimes contradictory to them: where the laws protect people’s rights to divorce, to use birth control and even to choose abortion.”²⁷² Cuomo explained that the obligation to protect the freedom to let citizens choose wrongly is one that guarantees “freedom for all, [and so] guarantee[s] our right to be Catholics: our right to pray, to use the sacraments, to refuse birth control devices, to reject abortion, not to divorce and remarry if we believe it to be wrong.”²⁷³ Though Cuomo does not cite Murray directly, he seems to draw upon the sentiments encapsulated by the jurisprudential principle: provide citizens with the most freedom possible, with the least restriction necessary.²⁷⁴ In Cuomo’s line of reasoning, the state’s decision to not restrict certain activities through law simultaneously provided religious persons the ability to refuse to engage in the same activities because of their beliefs.

²⁶⁹ Mario Cuomo, “Religious Belief and Public Morality: A Catholic Governor’s Perspective,” 13 September 1984 accessed at <http://archives.nd.edu/research/texts/cuomo.htm> on 10 March 10, 2014.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ John Courtney Murray, “Memo to Cardinal Cushing on Contraception Legislation,” 82.

After describing the practical realities of the jurisprudential principle, Cuomo described the Non-Establishment Clause as protecting the church from the politics of others, while at the same time, allowing one to use his or her religious values as the basis for broader policy:

Thus, the same amendment of the Constitution that forbids the establishment of a State Church affirms my legal right to argue that my religious belief would serve well as an article of our universal public morality. I may use the prescribed processes of government -- the legislative and executive and judicial processes -- to convince my fellow citizens -- Jews and Protestants and Buddhists and non-believers -- that what I propose is as beneficial for them as I believe it is for me; that it is not just parochial or narrowly sectarian but fulfills a human desire for order, peace, justice, kindness, love, any of the values most of us agree are desirable even apart from their specific religious base or context.²⁷⁵

When there is a failure, however, to convince the majority of the population of the desirability of the transfer of one's religious values into that of law, one ought take a "hands-off" approach. Cuomo thus defines public morality as that which is developed from a "consensus view of right and wrong."²⁷⁶ Correspondingly, "values derived from religious belief" need not be accepted solely on their religious origin; at the same time, they do not deserve to be rejected for this precise reason either.²⁷⁷ Cuomo developed this idea by recognizing that the American consensus "reflects to some extent religious values of a great majority of Americans," but that, at the same time, "religiously based values don't have an *a priori* place in our public morality."²⁷⁸ He thus argued that "the community must decide if what is being proposed would be better left to private

²⁷⁵ Mario Cuomo, "Religious Belief and Public Morality."

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

discretion than public policy; whether it restricts freedoms, and if so to what end, to whose benefit; whether it will produce a good or bad result; whether overall it will help the community or merely divide it.”²⁷⁹

Cuomo’s articulation of consensus contrasts with the position explicated by Murray throughout *We Hold These Truths*. Cuomo defines the idea of the consensus as rooted in the prevailing opinion of the majority. Moreover, Cuomo indicates that in those situations where there is no clear majority, politicians ought err on the side of freedom, rather than restriction. What makes Cuomo’s position so hard to parse, then, at least in the terms of his concurrence with Murray, is that the first half of his argument Murray would have rejected, yet the latter half likely accepted. Let me explain further: in the introduction to *WHTT*, Murray wrote that the very struggle of reaching a consensus formed an otherwise disparate society in “a people.”²⁸⁰ This consensus, however, is not rooted in “secondary rationalizations,” nor in “the residual minimum left” after all matters upon which there are disagreements have been excised.²⁸¹ The consensus is exists when the public collectively agrees that there are certain truths that must be held in order for individuals or groups to consider themselves actual members of a certain society.

Murray roots the particular *American consensus* in the notion that there are, in fact, certain truths that form the bedrock of American civil and political life.²⁸² Because of the consensus’ importance, it must always be the subject of debate, so that its articulation of the truth is constantly refined. This same consensus is to be held by all involved in society because it is, in and of itself, true.²⁸³ Neither experience (as interpreted by the majority) nor reduction of the

²⁷⁹ Ibid.

²⁸⁰ *WHTT*, 27.

²⁸¹ Ibid.

²⁸² Ibid., 28.

²⁸³ Ibid.

consensus to the lowest common denominator is the correct application of this principle. Instead, the consensus is reached by a “conspiracy,” defined by Murray in terms of disparate members of society breathing together.²⁸⁴ Murray’s view of consensus thus diverges from the one proposed by Cuomo in a significant manner. While Murray would approve of Cuomo’s reticence to legislate individual matters of morality upon which there was no consensus, he would disapprove of Cuomo’s more general treatment of the consensus itself. Murray, I believe, would advise Cuomo to use his own political position to shape the consensus toward a fuller embrace of what is generally true, as well as in more particular matters, for instance, in the case of abortion. With this distinction in mind, I turn now to an overview of the application of his logic to the particular issue of legalized procured abortion.

In speaking about legalized abortion, Cuomo portrayed the matter as a question of public morality which lacks public consensus. Though Cuomo admitted “even a radically secular world must struggle with the questions of when life begins,” he explicates his own position as being one that is fundamentally unenviable: his Catholic faith prescribes a position against abortion (one with which he professed agreement), but at the same time he bears a larger responsibility because he “[defines] policies that determine other people’s rights in these same areas.”²⁸⁵ He thus viewed the legalization of abortion, though a matter of public morality, as also calling for “prudential political judgment.”²⁸⁶ This means that, at least in Cuomo’s mind, while he is under certain religious obligations, his “church does not order [him] – under pain of sin and expulsion – to pursue [its] salvific mission according to a precisely defined political plan.”²⁸⁷ Cuomo subsequently built upon the precise role of the bishops in this matter, suggesting that they ought

²⁸⁴ Ibid., 37-9.

²⁸⁵ Cuomo, “Religious Belief and Public Morality.”

²⁸⁶ Ibid.

²⁸⁷ Ibid.

be “teachers not pollsters.”²⁸⁸ Cuomo offers a helpful nuance in this matter: religion ought not change its teachings based upon the prevailing opinions in a pluralistic society. At the same time, of course, religion cannot expect its minority opinion to be legislated simply because it is religious. Implied in this position, then, is the assertion that if Catholics *qua* Catholics did a more effective job of convincing society as a whole of the correctness of Catholic moral teachings, Catholic politicians could then act more concretely in the legislative square. In the current situation, Cuomo, aware of Catholic moral teaching, suggests that the politician must make a prudential judgment regarding the application of these same principles. In other words, “Church teaching on ... abortion is clear. But in the application of those teachings...there was and is no one, clear, absolute route that the Church says, as a matter of doctrine, we must follow.”²⁸⁹ Therefore, Cuomo believed himself to be on solid ground on two fronts: he thought it within his rights as a Catholic politician to conclude that “legal interdicting of abortion by either the federal government or the individual states is not a plausible possibility and even if it could be obtained, it wouldn’t work.”²⁹⁰ Because of this conclusion, Cuomo also figured that it is within his rights to ask the rhetorical question: “Are we asking government to make criminal what we believe to be sinful because we ourselves can’t stop committing the sin?”²⁹¹ Though he did not offer an explicit answer, one can reasonably assume that Cuomo’s response would be a measured, though firm, “yes.”

Cuomo suggests at the conclusion of his remarks that Christian witness will be the most effective means of convincing others to act in accordance with Christian morality: even in terms of abortion. Cuomo stated:

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Ibid.

We can be fully Catholic; proudly, totally at ease with ourselves, a people in the world, transforming it, a light to this nation. Appealing to the best in our people not the worst. Persuading not coercing. Leading people to truth by love. And still, all the while, respecting and enjoying our unique pluralistic democracy. And we can do it even as politicians.²⁹²

In the final analysis, Cuomo articulated a public philosophy that allowed for religious values to play a role in the actions of those in the public square, but did not go so far as to allow these values to outweigh a significant respect for religious pluralism. Cuomo appropriated Murray's jurisprudential principle as an overarching matrix by which he would govern. What is more, Cuomo suggested that those who clamored for legislation making abortion illegal were, in effect, asking the state to legislate what they themselves could not convince their fellow citizens to acknowledge: the immorality of abortion. Cuomo constructed an approach to abortion that acknowledged the significance of the issue as one of public morality but fell back upon Murray's thoughts regarding the problem of coercive law even in these matters. Cuomo construed the "consensus" as relying upon the majority opinion, or, at the least, as being beholden to a vociferous minority. Nevertheless, Cuomo seemed hesitant to use his political opportunities to advocate for values he considered to be particularly religious (i.e. outlawing procured abortion). The irony of this situation is apparent: Cuomo argued that religious values have a place in the public conversation so long as they were intelligible to the society as a whole; yet, as a member of this same public conversation, he did not attempt to render the argument against abortion intelligible. Instead, Cuomo invoked the aforementioned jurisprudential principle in order to argue that freedom benefited the overall common good in this case more than restriction. On

²⁹² Ibid.

Cuomo's part, this was a matter of prudential political judgment. The difficulty in accepting this judgment, however, stems from what Thomas Ferugson called "the myth of 'democracy as religion'" which leads to a drift into purely secular ideology.²⁹³ Cuomo used an overly broad interpretation of consensus; as a consequence of this, one is left to wonder if the governor allowed advocated a position too satisfied with the legislative and judicial *status quo* and, because of this, failed to advocate for necessary restrictions.

We now to turn to the final figure of this thesis, Henry Hyde, to provide a review of remarks he gave at Notre Dame in response to the comments of Governor Cuomo. Delivered only months after Mario Cuomo's speech at Notre Dame, Congressman Henry Hyde offered "Keeping God in the Closet: Some Thoughts on the Exorcism of Religious Values from Public Life," at the Notre Dame School of Law.²⁹⁴ Hyde framed his speech as initially "discussing some of the major questions that have lately arisen touching the relations between politics and religion" and then "[concluding] with a few words about their meaning" for Catholics.²⁹⁵ Hyde began his remarks by noting that he did not intend to appeal for a nation ruled by explicitly religious precepts or the identification of one particular political party with the doctrinal positions of a particular religion. Hyde did not even endorse a more muscular role for the church itself in the secular realm. The dominant presence of the Catholic Church – any church for that matter – in the political realm would not only be bad for society, but also for the church itself. Hyde explained that "when the church becomes too immediately identified with any particular partisan organization or agenda, it has lost a measure of its crucial capacity to be a sign of unity

²⁹³ Thomas Ferguson, *Catholic and American: The Political Theology of John Courtney Murray* (Kansas City, MO: Sheed and Ward, 1993), 90.

²⁹⁴ Henry Hyde, "Keeping God in the Closet: Some Thoughts on the Exorcism of Religious Values from Public Life," 24 September 1984 accessed at <http://archives.nd.edu/research/texts/hyde.htm> on 10 March 2014.

²⁹⁵ Ibid.

in a broken world.”²⁹⁶ The reason for this, Hyde maintained, is grounded in the reality that a church which too closely identifies itself with one ideological position is “risking one of its essential roles” which is “that of being ground on which we can gather, not as partisans but as men and women of goodwill, to consider our differences in the context of our common humanity.”²⁹⁷ Acceptance of these premises, however, does not mean that religion ought to absent itself from discussions of political issues.

Hyde retrieved a broad range of examples that he believed buttressed his case against extreme secularists: he cited figures as diverse as John Winthrop and John Courtney Murray, calling the latter “the architect of the Vatican Council’s Declaration on Religious Liberty.”²⁹⁸ Hyde argued that:

Religion and politics have thus always "mixed" in America, if what we are talking about is religious values and public policy. What the founders wisely understood was that religious institutions should not become unnecessarily entangled with the political process. From this understanding arose the twin principles of the First Amendment: No established church, and no state coercion over religious belief and practice, within the limits of maintaining the public order.²⁹⁹

At the same time, Hyde maintained that “the constitutional separation of church and state is thus a question of institutional distinctiveness and integrity. [This separation] was never intended to rule religiously-based values out.”³⁰⁰

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

Until this point, Hyde and Cuomo proceeded along similar, though not perfectly aligned, paths of argumentation. Now, however, one sees a divergence because Hyde advocated for a more robust presentation of religious values in the public square than did Cuomo. In some respects, Cuomo and Hyde disagreed not on the presence of religious values in the public square, but rather on the extent to which these same values ought to color the day-to-day political decisions of politicians. Hyde decried the situation in the contemporary political climate where “any appeal to a religiously-based value to buttress an argument for this or that public policy option was thus a violation of the separation of church and state.”³⁰¹ And yet:

the application of this secular principle has been schizophrenic to say the least. The clergy were revered when they marched at Selma, joined anti-war sit-ins and helped boycott lettuce. They are reviled when they speak out against abortion. Anyone who studies these subjects soon gets familiar with the double standard.³⁰²

Hyde construed the argument of Catholic political opposition to abortion as inherently protected by the Constitution, firmly rooted in Catholicism, and commensurate with other Catholic stances.

Hyde believed the best way to advance opposition to abortion was to *not* portray it as a particularly Catholic stance— but rather to present it as part of in the best tradition of American Constitutionalism wherein the right to life is defended. Though Hyde recognized that opposition to abortion may proceed from religious values, the overarching metanarrative against abortion ought be rooted in the recognition of “a basic human right, the first civil right, enshrined in our nation’s birth certificate.”³⁰³ This supposition remains important when Catholics attempt to speak about issues such as abortion. Though the “first causes,” may be religious, there is still

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

an obligation to do so in language and imagery that is accessible to a pluralistic audience, and not just to Catholics. In our democracy, the bishops clearly have the right to go farther, and to suggest what in their prudential judgments the public policies most likely to meet the test of their moral criteria would be. In Catholic theory, the bishops' prudential judgment is to be weighed seriously and respectfully; it is not weighted with the same gravity, however, as the bishops' teaching about the normative moral framework that should guide public policy.³⁰⁴

Hyde advised politicians in a similar manner: “No more than any other citizen can we expect a president to put this conscience into the closet during his or her term of office. We can expect that all presidents will hold to the distinction between religious institutions and religious values in framing their approach to these questions.”³⁰⁵ The real problematic for Hyde was not the influence of religious values in politics: he maintained that a non-believer had just as much right to use his or her values of non-belief to reach political conclusions as the believer. What did, however, concern Hyde is that certain positions will be excluded from the public square precisely because they are usually associated with religious people. This would result, he lamented, in casting out the “natural law tradition [which] provides a means for mediating religious values into the public area in a publicly accessible way.”³⁰⁶ In response to this possibility, Hyde flipped the question of religious values in secular society on its head and wondered aloud “whether the American experiment can survive the sterilization of the public arena that takes place when religiously based values are systematically ruled out of order in the

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

public discourse.”³⁰⁷ Before discussing the matter of abortion directly, Hyde made one more simple, yet trenchant point. He noted the irony involved in the fact that for many years Catholics were excluded (or faced efforts to exclude them) due to their alleged rejection of pluralism. And now, in current times, as a minority opinion of sorts, and the guarantor of plurality, they find their voice unwelcomed in the conversation.³⁰⁸

The foregoing explanation of the contours of Hyde’s argument has led us to the final paragraphs of his talk. At the talk’s conclusion, he pivoted directly toward the matter of abortion and, in doing so, attempted to recalibrate the manner in which abortion is discussed. Once again, he proceeded from a fundamentally Catholic worldview, yet attempted to do so in a manner that was not religiously idiosyncratic. Hyde offers here, at least in one formulation, a public philosophy that informs public policy. He first suggested that “we ought make use of the educative potential of public office to make clear that abortion is not, at bottom, a ‘Catholic issue,’ but rather a moral and civil rights issues, a humanitarian issue and a constitutional issue of the first importance.”³⁰⁹ Secondly, Hyde suggested that “we ought do everything in our power to make abortion a less immediate resort for the bearer of an unwanted child.”³¹⁰ Hyde subsequently shifted his focus again to those who would cite the lack of a public consensus on the matter of abortion. Hyde appeared to be directly addressing Cuomo here – and with him those who acknowledge abortion as a matter of public morality up for discussion. He argued that “the duty of one who regards abortion as wrong is not to bemoan the absence of a consensus against abortion, but to help lead the effort to achieve one.”³¹¹ He continued by suggesting that

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Ibid.

Catholics in elected office bore a moral burden “to clarify precisely what is at stake in the abortion controversy (and not only for the unborn child, but also for the moral-political health of the American experiment).”³¹² Hyde then offered a coda of sorts, lamenting: “Until we reestablish the legitimacy of an appeal to religiously based values in the conduct of the public debate over the public business, the abortion debate will remain a case of barely restrained ‘civil war’ carried on by other means.”³¹³ Hyde’s conclusion suggests that what ails the American political scene is a lack of political courage. Professing opposition to abortion may not be politically expedient; basing such disagreement in religious values will be even more difficult. Hyde does not believe, however, that such difficulties should stand in the way of attempts to rearticulate religious values in manners intelligible to a pluralistic political scene. An admittedly unanswered question in this consideration is whether or not Hyde fully appreciated the ambiguous situations faced by Christians in the earthly city. Those sympathetic to Hyde’s broader positions regarding public policy would likely characterize him as grasping this ambiguity, while political opponents would disagree.

Conclusion

There are several difficulties with the broader project that has been constructed herein: first and foremost, the literature is vast and the range of opinions varied. Moreover, individuals examined within these pages remain products of their time. Those examined – from Augustine to Hyde – also wrote during times of incredible historical fluidity. Nevertheless, though the landscape of history be forever changing, to say nothing of the present, what has been attempted throughout this thesis is a form of exposition that looks favorably upon those viewpoints that can

³¹² Ibid.

³¹³ Ibid.

appreciate nuance and the fundamental ambiguities involved in being a pilgrim member of the earthly city, still unsure as to the final ordering of one's ultimate destiny – or the destiny of the state as a whole for that matter.³¹⁴ Nowhere was this problem more present than in this past chapter, wherein I attempted to sketch summaries and analyses of three political thinkers who found themselves also engaged in the political life of the American nation, albeit at different points. The challenges faced by Kennedy were different than those confronted by Cuomo and Hyde. Kennedy needed to make a case that a Catholic could be trusted respect the founding political principles of a pluralistic nation. Kennedy thus spoke of particular challenges to Catholic allegiance, and in doing so, invoked larger questions of the place of religion belief in secular politics. Years later, Cuomo and Hyde returned to this topic, yet did so in a different manner because the conversation had changed. If Kennedy needed to answer the question of “how could a Catholic be an American?” then Cuomo and Hyde grappled with the same terms, considered in a different order: “How could an American still be Catholic?” The conclusions of each of these figures answered that this would be possible.

Kennedy, for his part, attempted to outline an understanding of his religious faith that made it irrelevant to the needs of the state. He did this in an attempt to assuage concerns that a Catholic President would, to one extent or another, govern by the particular moral principles of the Catholic Church. It is no surprise, therefore, that Kennedy enumerates specific examples – education policy, relations with the Holy See – in which he advocated for positions that did not coincide with Catholic positions, as such. Kennedy did, however, end his speech with a specific mention of God. This highlights the fact that Kennedy took for granted the presence of God – and more generally, religiously based morality – in the public square; yet, he did not believe that

³¹⁴ This idea is developed throughout the work of John Lewis Gaddis, *The Landscape of History* (Oxford, UK: Oxford University Press, 2002).

particular elements of one religion or another should be privileged in policy discussions because of the faith of the politician holding them. In other words, Kennedy did not see any problem with religious values *per se*; rather, he thought that specifically going about matters of specific policy because of his Catholics values would offend the protection of religious pluralism enshrined in the First Amendment.

Mario Cuomo delivered his speech at Notre Dame when the inclusion of religious beliefs construed in the broadest sense could no longer be assumed as having a place in the public conservation. In this way, his comments (as well as those of Henry Hyde) occupy a different era in American politics. Cuomo thus needed to guard against allowing religious rhetoric to become entangled with his political positions for reasons of intelligibility. What is more, since religious arguments had become less intelligible to the population at large, Cuomo bore the burden of balancing his religious commitments and his need to articulate intelligible arguments, all in a religiously plural society. Cuomo attempted to achieve this balance advocating less legislative restriction, rather than more. He made pluralism the operative value for his political career: an understandable decision. Cuomo believed that such a tendency toward tolerance – even of policies that he himself believed to be problematic for Catholics – achieved two important goals, one religious and one political. The first result of Cuomo’s position, his argument explained, protected the right of Catholics themselves to dissent. Using abortion as an analogue, Cuomo reasoned that if the state did not make procured abortion illegal, then, in a corresponding way, Catholics could never be forced to procure an abortion. Cuomo believed the second consequence of his position provided Catholics an entry point into political debates as political, not religious actors. In other words, because the government does not do the moral work of religion, there would be incentive for Catholics (and others) to hone their arguments in such a

way as to be intelligible (and thus possibly convincing) to the existing pluralistic society. In this way, Cuomo advocated for a public philosophy that admitted the place of religious values in the political conversation, so long as they moved beyond idiomatic religious expression. Moreover, Cuomo conceived of a public philosophy which favored freedom precisely because it would allow religion to remain a part of an increasingly secular society. Cuomo, however, stopped short of suggesting that Catholic politicians themselves attempt to use their particular religious values to govern others. This is the main point of disagreement between Cuomo and Henry Hyde, the latter of whom believed that Catholics in politics bore an obligation to render Catholic arguments intelligible and then act accordingly.

Henry Hyde's speech at Notre Dame followed along many of the same themes as Mario Cuomo. Hyde sought neither an increased identification between political parties and specific religious values, nor the imposition of religious (i.e., Catholic) values upon a pluralistic society. Instead, Hyde advocated for a reassertion of a public philosophy that admitted religious values to the broader public conversation. Perhaps the most important part of Hyde's argument was not the logic he outlined for speaking about procured abortions, but rather the recognition that the abandonment of the project of public philosophy harmed the overall health of the American political scene. Hyde recognized that religious values are only serve as a starting point for conversation in pluralistic society and do not deserve to be considered as correct by the general public solely because these same ideas are religious. In fact, those advocating against abortion found themselves at a natural disadvantage because their beliefs originated in religious reasoning. Hyde allowed for religious values to be the basis for political positions, yet also suggested that these religious values ought be examined to see where they coincided with the founding principles of American constitutionalism. In other words, while religious values served

as fundamental starting points for the arguments against the legality of procured abortion, they, in and of themselves, were not sufficient. Consequently, Hyde commented that it was the obligation of Catholics in politics to find these places of convergence between religious and political values in such a way as to work toward a society that was both free and more virtuous. Instead of abandoning the inclusion of religious values in politics, Hyde believed (as do I, and with me, I would claim Murray) that what is really necessary is a recommitment to the use of publically intelligible philosophy that formulates its ideas in a manner intelligible to pluralist society. Failing that, at the very least, Catholics must be able to enter into dialogue and keep the conversation between secularity and Catholicism alive. Indeed, what Murray claimed many years ago remains true: civility dies with the death of dialogue.³¹⁵

³¹⁵ John Courtney Murray, *WHITT*, 31.

Conclusion: Saint Patrick or the Fourth of July?

This thesis began by recalling Joseph Cardinal Bernardin's hope that Catholic participation in the public square could usher in a "new moment" in American public policy debates. Bernardin envisioned a situation in which Catholics would not only increase their own understanding of how their faith ought influence their participation in the earthly city – both as private citizens and as actors in the public square – but also influence those who did not necessarily characterize themselves as Catholics, or even more broadly, as possessing religious values. Bernardin thought this achievement to be within reach if Catholics continued to engage the earthly city using the terms intelligible to the latter, while maintaining adherence to the values of the former. I used Bernardin's plea for a new moment to frame the proceedings of this work. Chapter One engaged Augustine's theology of the heavenly and earthly cities. Augustine contributed to the task at hand by providing a theological justification for the unapologetic participation of Christians in the earthly city. Moreover, Augustine constructed a political theology of sorts that recognized that when Christians did become engaged with those who did not hold similar values, compromise would sometimes be necessary. Augustine, however, wrote at a period when Christians were only beginning to involve themselves in the inner workings of the state and so to ask Augustine to solve the heady problems of how Catholics ought act when presiding over a pluralistic society is not possible.

Chapter Two examined the development of John Courtney Murray's political theology articulated as a public philosophy. My investigation primarily focused upon Murray's treatment of Leo XIII, *Gaudium et Spes*, his more narrowly focused work, *We Hold These Truths*, and the memo drafted by Murray and sent to Cardinal Richard Cushing of Boston regarding contraception legislation in the early 1960s. From here, I engaged the writings of Mary Segers

and Todd Whitmore that speculated as to how Murray would have considered the matter of legalized procured abortion. All of these efforts sought to distill Murray's public philosophy into an understandable form. In the final analysis, I determined that Murray's public philosophy based itself upon the principle that government should provide too much freedom rather than providing too little because freedom itself existed as a constitutive element of human dignity. His philosophy also includes the distinction between public and private morality, and the necessity of articulating policy arguments in a form intelligible to a religiously plural society.

The third and final chapter of this thesis engaged John Kennedy, Mario Cuomo, and Henry Hyde, all three of whom were Catholic politicians who spoke publically regarding the intersection of their religious beliefs and political duties. Each of these figures appropriated Augustine's fundamental insight that the Christian bore an obligation to the betterment of the earthly city. Kennedy, Cuomo, and Hyde also accepted the insights of *GS* that religious freedom had become normative in the modern age. What is more, these three figures also configured their respective political views around finely held distinctions between public and private morality: they did not believe that all moral issues ought be the subject of legislation, nor that their personal religious preferences prescribed particular manners of solving matters of private morality. The disagreements between these figures based themselves in the extent to which they believed their religious beliefs could and should influence their handling of matters that affected the whole of the earthly city.

My main purpose here has not been to judge the relative merits of the arguments of each of these figures, but rather to illuminate the manner in which each spoke and so craft a narrative which suggests that intelligibility is often neglected by those who wish to make religious

arguments in the public square.³¹⁶ Each of these figures also provides for the reader a different strategy by which this intelligibility may be reached. Kennedy explicitly minimized the influence that his Catholicism would influence his governance, while invoking the broader idea that he governed with knowledge of the existence of God. Mario Cuomo believed that in order to protect the free exercise of religion, activities that contradicted specific religious sensibilities could not be outlawed, because this could allow religious people to be subsequently compelled to act against their own values. Cuomo suggested that religious values possessed a place in the public square, but that it was not the duty or place of a politician serving the entirety of society to manifest such beliefs. Finally, Henry Hyde suggested that Catholic politicians themselves render their own religious beliefs intelligibly to secular society in order to work for the improvement of that same society.

None of these three figures are perfect: Kennedy claimed that he would not be guided by his personal religious beliefs if elected, but such a statement, in and of itself, made a statement regarding religious values. Mario Cuomo understood consensus as simply being the majority opinion, and Hyde allowed a politician's religious beliefs to hold too much sway in a religiously plural society. Nevertheless, their perspectives all point the reader toward what a "new moment" in American Catholicism might resemble: a public philosophy, which, though originating in religious values, is articulated in a manner intelligible to more than those who hold religious principles.

³¹⁶ The term "intelligibility" raises a whole series of questions that will remain unanswered. To engage questions of what makes arguments intelligible is a needed next step, albeit one for which there is not space. Nevertheless, I should like to propose that to call a political argument "intelligible" is to suggest that it is (1) able to be understood, (2) has the potential to persuade opponents, and (3) draws upon principles that are available to all those involved in a particular debate.

Near the conclusion of one of his articles reflecting upon Leo XIII, John Courtney Murray wrote:

It would be pointless to argue the relative merits of the diverse applications - for instance, to argue the question, whether the constitutional law which governs 28 million Catholic Spaniards is "better law" than the constitutional law which governs 32 million Catholic Americans. The argument would be pointless because the situations are incommensurable. It would be like the famous drunken argument on the question, which is greater - St. Patrick or the Fourth of July? The more decisive thing is to know the right manner of argument for either of these legal decisions, for or against any legal decision affecting the relation of human law - that is, the state - to the order of religion.³¹⁷

Though I cannot be sure if Murray intended to be ironic by invoking an old joke regarding Saint Patrick and the Fourth of July, the poignancy of its meaning still obtains. The first figure is grounded in religious meaning yet has become emblematic of ethnic pride. Independence Day, a thoroughly secular holiday, is wrapped in that sort of ritual usually reserved for religious observances, replete with the burgeoning virtue of "patriotism." I bring this up at the conclusion of this thesis to illustrate what Augustine first intuited: religious belief and politics will become inevitably entwined since they both cut to the very heart of human experience: the expression of identity. What is more, just as a debate regarding the advisability of one form of constitutional government or another is based not necessarily in general principles, but rather in the particular situation of one nation or another, so too are Catholic approaches to matters of public morality in a pluralistic society largely beholden to related political and societal factors. This is not to say, of course, that in order to be a Catholic in a pluralistic society one must change one's beliefs in

³¹⁷ John Courtney Murray, "Leo XIII and Pius XII: Government and the Order of Religion," 113.

accord with the prevailing political winds, but it does suggest that the advisability of one approach or another to matters of public morality are subject to political concerns as well as religious ones.

In order to achieve, as Cardinal Bernardin called it, a “new moment” for Catholic participation in the public square, it will be necessary to engage matters of public morality with the best resources of the Catholic intellectual tradition. In any such configuration, Augustine’s theology of the relationship between the heavenly and earthly cities, as well as John Courtney Murray’s public philosophy will prove vital to the task. Moreover, any such engagement with issues as divisive as abortion will also require a commitment to dialogue and discussion: for Catholics, such a commitment must be underlined not only be a tone of engagement, but also with efforts to render their vocabulary intelligible to non-believers of all stripes.

In the final analysis, this “new moment” will not be reached by repeating the political rhetoric of Kennedy, Cuomo, or Hyde (or even a combination of therein). Rather, the lessons of each of these figures must be appropriated anew. In other words, American Catholics will only be able to remain proponents of the faith of Patrick if they are also able to participate in the local Fourth of July parade.

Works Cited

- Alici, Luigi. "Introduction: Sign and Language" in *Teaching Christianity (De Doctrina Christiana)*. Trans. Edmond Hill. Hyde Park, NY: New City Press, 1996. 28-45.
- Augustine of Hippo. *City of God*. Trans. Henry Bettenson. London, UK: Penguin Books, 2003.
- _____. *Teaching Christianity (De Doctrina Christiana)*. Trans. Edmond Hill. Hyde Park, NY: New City Press, 1996.
- Baxter, Michael "Murray's Mistake." *America Magazine* (September 23, 2013) accessed March 6, 2014. <http://americamagazine.org/issue/murray's-mistake>.
- Bernardin, Joseph. "A Consistent Ethic of Life: An American-Catholic Dialogue," in *Selected Works of Joseph Cardinal Bernardin: Church and Society*, 81-90. Collegeville, MN: The Liturgical Press, 2001.
- Brown, Montague. *Freedom, Philosophy, and Faith*. Plymouth, UK: Lexington Books, 2011.
- Cuomo, Mario. "Religious Belief and Public Morality: A Catholic Governor's Perspective." 13 September 1984. Accessed at <http://archives.nd.edu/research/texts/cuomo.htm> on 10 March 10, 2014.
- Deane, Herbert. *The Political and Social Ideas of Augustine*. New York: Columbia University Press, 1963.
- Dignitatis Humanae* (Declaration on Religious Liberty) in *Vatican Council II: The Conciliar and Post Conciliar Documents*. Vol. 1, New Revised Edition. Vatican II, December 7, 1965. Trans. Austin Flannery. Northport, NY: Costello Publishing Company, 2004. 799-812.
- Dodaro, Robert "Augustine's Secular City," in *Augustine and His Critics: Essays in Honor of Gerald Bonner*. Ed. Robert Dodaro and George Lawless. London: Taylor and Francis, 2000). E-book. 231-259.
- _____. *Christ and the Just Society in the Thought of Augustine*. Cambridge, UK: Cambridge University Press, 2004.
- Dyson, R.W. *The Pilgrim City: Social and Political Ideas in the Writings of St. Augustine of Hippo*. Woodbridge, UK: The Boydell Press, 2001.
- Ferguson, Thomas. *Catholic and American: The Political Theology of John Courtney Murray*. Kansas City, MO: Sheed and Ward, 1993.

Gaudium et Spes (Pastoral Constitution on the Church in the Modern World) in *Vatican Council II: The Conciliar and Post Conciliar Documents*. Vol. 1, New Revised Edition. Vatican II, December 7, 1965. Trans. Austin Flannery. Northport, NY: Costello Publishing Company, 2004. 903-1001.

Gascoigne, Robert. *The Church and Secularity: Two Stories of Liberal Society*. Washington, DC: Georgetown University Press, 2009.

Glenn, Gary and John Stack. "Is American Democracy Safe for Catholicism?" *The Review of Politics* 62:1 (Winter, 2000): 5-29.

Hooper, Leon. "Introduction" to "Leo XIII and Pius XII: Government and the Order of Religion," in John Courtney Murray, *Religious Liberty*, ed. Leon Hooper. Louisville, KY: Westminster/John Knox Press, 1993. 49.

Hyde, Henry. "Keeping God in the Closet: Some Thoughts on the Exorcism of Religious Values from Public Life," 24 September 1984. Accessed at <http://archives.nd.edu/research/texts/hyde.htm> on 10 March 2014.

Kalscheur, Gregory. "Moral Limits on Morals Legislation: Lessons for U.S. Constitutional Law from the *Declaration of Religious Freedom*." *Southern California Interdisciplinary Law Journal* (2006): 1-48.

Kennedy, John F.. "Address to the Greater Houston Ministerial Association." 13 September 1960 Accessed at <http://www.jfklibrary.org/Asset-Viewer/ALL6YEBJMEKYGMCntnSCvg.aspx#> on 10 March 2014.

Komonchak, Joseph. "John Courtney Murray and the Redemption of History: Natural Law and Theology," John Courtney Murray and the Growing End, Eds. J. Leon Hooper and Todd Whitmore. New York: Sheed and Ward, 1996. 60-81.

Markus, Robert. *Christianity and the Secular*. Notre Dame, IN: Notre Dame University Press, 2006.

McConnell, Michael "Is There Still a 'Catholic Question' in America? Reflections on John F. Kennedy's Speech to the Houston Ministerial Association." *Notre Dame Law Review* 86 (2011): 1635-1653.

McGreevy, John. *Catholicism and American Freedom*, New York, NY: W.W. Norton, 2003.

McKenzie, William. "JFK's Big Legacy on Religion." *Boston Herald*, 10 November 2013.

Murray, John Courtney. "Memo to Cardinal Cushing on Contraception Legislation." *Bridging the Secular and the Sacred*. Ed. J. Leon Hooper. Washington, DC: Georgetown University Press, 1994. 81-86.

- _____. "The Issue of Church and State at Vatican Council II." *Theological Studies* 27 (December 1966) 580-606.
- _____. "Leo XIII and Pius XII: Government and the Order of Religion" in *Religious Liberty*. Louisville, KY: Westminster/John Knox Press, 1993. 50-125.
- _____. "Things Old and New in 'Pacem in Terris,'" *America*. April 27, 1963. Accessed on March 6, 2014 at <http://americamagazine.org/issue/things-old-and-new-pacem-terris>.
- _____. *We Hold These Truths*. Lanham, MD: Sheed and Ward, 2005.
- O'Donnell, James "Doctrina Christiana, De." *Augustine Through the Ages: An Encyclopedia*. Ed. Allan D. Fitzgerald. Grand Rapids, MI: Eerdmans, 1999. 278-280.
- Donald Pelotte. *John Courtney Murray: Theologian in Conflict*. New York, NY: Paulist Press, 1976.
- Segers, Mary. "Murray, American Pluralism, and the Abortion Controversy." *John Courtney Murray and the American Civil Conversation*, Eds. Robert P. Hunt and Kenneth Grasso. Grand Rapids, MI: Eerdmans, 1992. 228-248.
- "Statement by Catholic Bishops Attacking Secularism as an Evil," *New York Times*, 21 November 1948.
- Todd David Whitmore. "What Would John Courtney Murray Say?: On Euthanasia and Abortion." *Commonweal*. October 7, 1994. 16-22.
- Williams, Rowan. "Politics and the Soul: A Reading of the *City of God*." *Milltown Studies* 19/20 (1987). 55-72.